

Case No. 05-340

IN THE SUPREME COURT OF THE STATE OF MONTANA

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ESTHER IRON SHELL,

Plaintiff/Appellant,

vs.

MISSOULA INDIAN CENTER, INC.

Defendant/Respondent.

STATE LAW LIBRARY  
OCT 26 2005  
OF MONTANA

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RESPONDENT'S BRIEF

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On Appeal from the District Court of the Fourth Judicial District  
of the State of Montana, In and For the County of Missoula

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IN THE SUPREME COURT OF THE STATE OF MONTANA

No. 05-340

**STATEMENT OF ISSUES**

- I. DOES AN EMPLOYER HAVE THE RIGHT TO PLACE AN EMPLOYEE ON PROBATION FOR A LEGITIMATE BUSINESS REASON IF NO PERSONNEL POLICIES ARE IN CONFLICT?
- II. DO ANY OF MIC PERSONNEL POLICIES CONFLICT WITH ITS RIGHT TO PLACE MS. IRON SHELL ON PROBATION?
- III. IN THE ALTERNATIVE, DID THE PARTIES PROPERLY DEFINE THE PROBATIONARY TERM AT THE OUTSET OF THE EMPLOYMENT?
- IV. AS A PROBATIONARY EMPLOYEE, COULD MIC TERMINATE MS. IRON SHELL FOR ANY REASON PRIOR TO THE END OF THE PROBATIONARY PERIOD?
- V. IN THE ALTERNATIVE, DOES MS. IRON SHELL STATE A CAUSE OF ACTION FOR TERMINATION IN VIOLATION OF PUBLIC POLICY OR THE WRITTEN PERSONNEL POLICIES?

**STATEMENT OF CASE**

The present case concerns the Missoula Indian Center ("MIC") offer of employment to existing employee Esther Iron Shell the position of the executive director of the Center. Ms. Iron Shell applied for, interviewed for, and ultimately accepted the position of executive director. She did so knowing the position would be probationary. There is no dispute that MIC had a legitimate business

reason for requiring probation as a term of employment. As a probationary employee, MIC had the right to terminate the employment. The District Court properly awarded summary judgment to MIC. MIC requests this Court affirm.

### **FACTUAL BACKGROUND**

In May, 2001, Defendant Missoula Indian Center hired Plaintiff Esther Iron Shell as an Cultural/Prevention Specialist for the Alcohol & Substance Abuse Prevention ("ASAP") Program. App. 2, Iron Shell Dep. Tr., p. 12. In this position, Ms. Iron Shell was supervised by Jim Dempsey, a supervisor who reported to the executive director. Id., at p. 88. Her duties included working with youth to implement the culture of North American Indians and promoting the prevention of drug and substance abuse or use. Id., at p. 87. As the ASAP coordinator, she did not supervise any employees. Id., at p. 120-21.

By all accounts, Ms. Iron Shell performed well in the ASAP position. Based upon her repeated allegations of illegal drug and alcohol use by coworkers, she did have several confrontations with coworkers which resulted in petty bickering, hard feelings, as well as unprofessional and snide comments back and forth. Id., at p. 99. This feud was further fueled by Ms. Iron Shell's interest in reporting the employees' alleged drug use. Id., at p. 93.

In July, 2002, the Missoula Indian Center opened applications for the

executive director. Id., at p. 110. On July 12, 2002, Ms. Iron Shell applied for the position. Id. In her interview, the Board of Directors informed her that the position would be probationary for the first 90 days. Id., at p. 116-7. Ms. Iron Shell voiced no opposition. Id., at p. 117.

On August 2, 2002, MIC sent a letter to Ms. Iron Shell offering the position to her. Id., at p. 122. The letter, attached hereto as App. 3, specifically informs Ms. Iron Shell that the position is probationary and outlines specific items which the Board of Directors would like her to work on:

During this probation period you will be expected to fulfill the following criteria:

1. Seek out and submit one major grant proposal.
2. Work on gaining strong supervisory skills.
  - a. Demonstrate growth in the work area, such as employee morale, conflict resolution, and communication.
  - b. Find resources to help with supervisory skill building training.

**At the end of the 90 days you will be evaluated on your performance as the director. At that time a decision will be made concerning making the Director position permanent.**

App. 3 (emphasis added).

The Board of Directors wanted to offer a probationary position to Ms. Iron Shell because they had previously had serious problems with other executive directors failing to act professionally, being unable to supervise staff, failing to



report to the Board accurate financial information, poor grant reporting, having bad audits, and failing to respect the Board as the employer. App. 4, Affidavit of Luanne Kicking Woman, ¶ 8.

Further, as the executive director, Ms. Iron Shell's duties were significantly expanded. Id., at ¶ 5. She supervised, disciplined, hired and fired any and all of the employees. Id. She was responsible for setting the policy for MIC as well as applying for grant funding, reporting to the Indian Health Service and making presentations to the members and the public as to the purpose of MIC. Id. In short, she was one of the highest paid member at MIC and was the public face for MIC. Id. There is no one at MIC with more responsibility. Id. As such, the Board wanted to evaluate Ms. Iron Shell before considering whether to offer the permanent position to her. Id.

Ms. Iron Shell began her full time duties as the executive director on August 16, 2002. App. 2, Iron Shell Dep. Tr. at p. 120. Soon thereafter, the Board of Directors had an orientation meeting with Ms. Iron Shell. Id., at p. 137. They informed her, again, that the one of the terms of the position was that it was probationary and further outlined the items they wanted her to work on. Id. At no time did Ms. Iron Shell inform the Board of Directors that she objected to the probationary term. Id., at p. 117.

After thirty days, the Board of Directors evaluated Ms. Iron Shell. Ms. Iron Shell said her first thirty days "went very badly." Id., at p. 157. There was significant in-fighting at MIC. Id. Half of the employees refused to recognize Ms. Iron Shell's authority as the executive director. Id., at p. 158 ("[I]t was like I didn't even exist.") and 188. These employees openly defied her or otherwise ignored her. Id., at p. 245, 23. The employees expressed their lack of respect and made fun of her. Id., at p. 245.

The Board of Directors' thirty day evaluation letter again outlines a number of problems with Ms. Iron Shell's performance and makes specific recommendations as to steps she could take to remedy the issues. A copy of the thirty day evaluation letter is attached hereto as Appendix 5.

Due to the problems with the employees, Ms. Iron Shell asked the Board of Directors to allow her to resign and take her old position back. Ms. Iron Shell told the Board that she "expected a terrible evaluation" and that she "didn't expect to be here at 30 days because of what is going on with the staff here and it's been personalized." Id., at p. 205. Ultimately, Ms. Iron Shell agreed to continue working as the executive director. Id., at p. 171. After this meeting, Ms. Iron Shell wrote a letter resigning from her previous ASAP coordinator position and a separate letter specifically accepting the position as executive director. Id., at p.

219.

While the first thirty days were "bad," Ms. Iron Shell described the next thirty days as "worse." Id., at p. 244. She continued to have to work with employees who openly defied her directions and refused to appear at meetings. Id., at p. 246. Her attempts to discipline the employees all backfired. Id., at p. 197. These problem employees refused to recognize her authority. Id., at p. 246. The Board of Directors' sixty day review continues to list a number of interpersonal items that the Board wanted her to work on. Id., at p. 249. A copy of the sixty day review letter is attached hereto as Appendix 6.

On November 11, 2002, the Board of Directors met to evaluate Ms. Iron Shell and determine whether to offer the permanent position to her. App. 4, Kicking Woman Affidavit, ¶ 6. Ultimately, they decided that the problems with her performance and the employees required them to not offer the permanent position to her. Id. Interestingly, before they could inform Ms. Iron Shell, she packed up her belongings and left MIC with the intention of not returning. App. 2, Iron Shell Dep. Tr. at p. 257. Inconsistently, on November 14, 2003, Ms. Iron Shell filed the present suit alleging wrongful discharge.

### **SUMMARY OF ARGUMENT**

The District Court's award of summary judgment is in conformity with

Montana law. MIC properly placed Ms. Iron Shell on probation. Ms. Iron Shell applied for, interviewed for, and ultimately accepted the executive director position of MIC. As part of this process, she was repeatedly informed that the position would be probationary. There is no dispute that MIC had a legitimate business reason to place Ms. Iron Shell on probation. It wanted to evaluate her in the new position, particularly because her duties were expanded and she would now be supervising employees.

MIC, as Ms. Iron Shell's employer, has the right to place her on probation with a legitimate business reason. The Court has not articulated a standard for placing an employee on probation. However, the Court has determined that a legitimate business reason is necessary to terminate an employee. An employer who meets the legitimate business reason standard cannot be held liable for placing an employee on probation.

There are no provisions in MIC's personnel policy which prohibits placing Ms. Iron Shell on probation. The provisions cited by Ms. Iron Shell are not applicable. She was not "subsequently rehired." Nor does the policy limit the right to place an employee on probation to the executive director.

In the alternative, the parties properly designated the probationary term at the outset of Ms. Iron Shell's employment as the executive director. The Court has

stated that an employer cannot use abusive expansion or extension of probationary periods after the fact, thereby avoiding the prospect of nullifying the protections afforded to Montana workers under the WDEA. That did not occur here. Ms. Iron Shell was repeatedly informed prior to the outset of her employment as the executive director that the employment was probationary.

As MIC properly placed Ms. Iron Shell on probation, Mont. Code Ann. § 39-2-904(2)(a) allows an employer to terminate an employee for any reason. The statute is clear and plain. As such, the Court is required to follow it.

However, in any event, Ms. Iron Shell cannot state a claim for relief that her termination was in violation of public policy or in violation of the personnel policies. Therefore, the District Court's award of summary judgment to MIC was proper.

### **STANDARD OF REVIEW**

Summary judgment is proper only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Rule 56(c), M.R.Civ.P. The Court reviews a district court's summary judgment ruling *de novo*. Watkins Trust v. Lacosta, 2004 MT 144, ¶ 16, 321 Mont. 432, ¶ 16, 92 P.3d 620, ¶ 16. The Court reviews a district court's legal conclusions for correctness. Generali v. Alexander, 2004 MT 81, ¶ 17, 320 Mont. 450, ¶ 17, 87 P.3d 1000, ¶

17. The movant must first demonstrate that no genuine issues of material fact exist. Jobe v. City of Polson, 2004 MT 183, ¶ 10, 322 Mont. 157, ¶ 10, 94 P.3d 743, ¶ 10. Once this has been achieved, the burden shifts to the non-moving party to prove, by more than mere denial and speculation, that a genuine issue of fact does exist. Id.

### ARGUMENT

Pursuant to the Wrongful Discharge from Employment Act ("WDEA"), a discharge is wrongful only if:

- (a) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;
- (b) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or
- (c) the employer violated the express provisions of its own written personnel policy.

Mont. Code Ann. § 39-2-904(1). Ms. Iron Shell contends that her discharge violates all three subsections of the Act.

The primary issue in this case is whether MIC had good cause to require probation as a term of Ms. Iron Shell's employment as the executive director. As such, that issue is addressed first. If MIC had such right, Ms. Iron Shell has no claim for wrongful discharge under subsections (1)(a) (refusal to violate public

policy) and 1(c) (violation of personal policy). Thus, those issues are addressed second.

**I. MONTANA LAW GRANTS MIC THE RIGHT TO PLACE MS. IRON SHELL ON PROBATION**

MIC had the right to place Ms. Iron Shell on probation under either of two distinct rationales. First, MIC had a legitimate business reason for placing Ms. Iron Shell on probation. Second, MIC, consistent with Hunter v. City of Great Falls, 2002 MT 331, ¶16, 313 Mont. 231, 61 P.3d 764, defined the terms of the probation at the outset of the employment. Under either rationale, the District Court properly granted summary judgment to MIC because the personnel policy does not limit the Board's actions.

**A. MIC HAD A LEGITIMATE BUSINESS REASON TO REQUIRE PROBATION AS A TERM OF MS. IRON SHELL'S EMPLOYMENT AS EXECUTIVE DIRECTOR**

The District Court's summary judgment order greatly simplified the analysis as to whether MIC had the authority to place Ms. Iron Shell on probation. The Court's analysis is based upon the principle that, absent a personnel policy provision to the contrary, the employer has the right to place an employee on probation. This is the correct analysis.

Mont. Code Ann. § 39-2-904(1)(b) allows an employer to discharge an

employee for "good cause." See also Hunter, at ¶ 16. Under the Code, "good cause" is defined as "reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason." Mont. Code Ann. § 39-2-903(5). Following this definition, the Court has held that a "legitimate reason is a reason that is neither false, whimsical, arbitrary or capricious, and it must have some logical relationship to the needs of the business." Buck v. Billings Montana Chevrolet, Inc. (1991), 248 Mont. 276, 281-82, 811 P.2d 537, 540.

The present case concerns a probationary term of Ms. Iron Shell's employment as the executive director. Placing an employee on probation is not as drastic an action as discharge. See, e.g., Arnold v. Yellowstone Mountain Club, 2004 MT 284, ¶ 25, 323 Mont. 295, ¶ 25, 100 P.3d 137, ¶ 25 (Employer could have used progressive discipline before terminating employee). As a result, the standard for placing an employee on probation should be less than what is required to terminate an employee.

In any event, an employer who can show a "legitimate business reason" for placing an employee on probation (instead of terminating the employee) cannot have any liability for doing so. To this end, MIC had a legitimate business reason for making the terms of the executive director position probationary. And,



significantly, at no time - either before the District Court or in her present brief before this Court - has Ms. Iron Shell contended that MIC did not have a legitimate business reason to place her on probation. Based on the previous problems as well as the significant increase in job responsibilities, the employer wanted to evaluate Ms. Iron Shell before determining whether to offer the permanent position to her. App. 4, Kicking Woman Affidavit, at ¶ 8. This is a legitimate business reason for requiring that the employment be probationary.

The Court's determination in Buck is applicable to the present dispute. In Buck, the new owner of a car dealership terminated the plaintiff's general manager position and replaced him with a person whom the new owner had employed for a long period of time. The new owner explained that the plaintiff was discharged pursuant to a company policy which placed its long-term employees in charge of newly acquired dealerships. Instead of offering evidence to dispute the new owner's explanation, the plaintiff argued that the employer's explanation was not adequate under the Act. The Court, however, held that it is inappropriate for courts to become involved in the day-to-day employment decisions of businesses. Buck, 248 Mont. at 282, 811 P.2d at 541. Thus, the Court affirmed the grant of summary judgment to the employer and held that the employer's proffered reason was a legitimate business reason. Id., 248 Mont. at 283, 811 P.2d at 541. To

conclude otherwise, would "force the new owner of a business to retain someone it did not know or perhaps even trust to manage a large dollar investment." Id., 248 Mont. at 282-83, 811 P.2d at 541.

A similar rationale applies in this case. MIC selected Ms. Iron Shell to be its executive director. But, the terms of the employment were that it would be probationary for 90 days. The reasons for making the position probationary are legitimate - this is the person who is the public face of the organization, is charged with carrying out the purpose of MIC, and is further charged with overseeing the employees. MIC wanted to make sure the relationship was correct before offering the permanent position. These are legitimate business reasons for, as part of the new position, placing Ms. Iron Shell on probation. To hold otherwise, would "force the [] owner of a business to retain someone it did not know or perhaps even trust to manage a large dollar investment."

**B. THE PERSONNEL POLICY DOES NOT PREVENT THE BOARD OF DIRECTORS FROM REQUIRING PROBATION AS A TERM OF MS. IRON SHELL'S EMPLOYMENT AS EXECUTIVE DIRECTOR**

Having resolved that MIC had the authority to place Ms. Iron Shell on probation, the issue then turns to whether any provisions in the personnel policy would prevent such action. A review of the personnel policy shows that no

provisions conflict with the Board's authority.

The difference in opinion between the parties can be summarized as follows: Ms. Iron Shell believes that a specific provision in the personnel policy is required in order for the Board to place her on probation. In contrast, MIC's position is that the employer has the right, with an appropriate legitimate business reason, to place an employee on probation. In particular, Ms. Iron Shell, both before the District Court and in her present brief, focuses on two provisions. Neither provision conflicts with the Board's authority to place the executive director on probation.

First, Ms. Iron Shell discusses the provision concerning employees who have left and are subsequently rehired as employees. The provision at issue states:

Center employees who **leave** for reasons other than disciplinary problems or unsatisfactory performance and who were employed by the Center for at least twelve (12) months and who are **subsequently** re-hired by the Center shall not be required to serve a probationary evaluation period.

App. 7 (emphasis added).

Ms. Iron Shell notes that she wrote two letters. In one she resigned her ASAP position and in the other she accepted the executive director position. Appellant's Brief, p. 16. Both were dated the same day. Id. The key to this issue is understanding that Ms. Iron Shell did not **leave** her employment and she was not

"**subsequently** rehired." Instead, she fully admitted that she was - at all times - employed by MIC. App. 2, Iron Shell Dep. Tr. at p. 240-242 ("Q: And, did you leave the Center? A: No. No, I did not leave the Center."). There is no gap in her employment. Id. ("Q: And so it's not like you were working there and you left, even for a split second, and then came back to employment there? A: No."). Indeed, before the District Court, Ms. Iron Shell agreed that she had not left the employment. Plaintiff's Opposition Brief to Defendant's Motion for Summary Judgment, p. 9 ("The same rule should apply when Esther was hired in another position at the Center, **even though she never left the Center's employ.**" (emphasis added)).

The second provision cited by Ms. Iron Shell is one which allows the executive director to place an employee on probation. Ms. Iron Shell contends that this provision only grants such power to the executive director. However, this is an overstatement. The provision states, in full, as follows:

The Executive Director shall have the authority to initiate a probationary evaluation procedure in cases of staff promotion or re-assignment in order to evaluate the performance of the employee in the new position.

Notably, the provision does not say that the power is limited to the executive director or that the executive director is the only one to have the power. This lack of limitation is significant. Under Montana law, as discussed herein, the

employer has the ability to place an employee on probation - either at the outset of the employment or for a legitimate business reason. With no personnel policy provision which limits the right of the Board, the Board had the power under Montana law.

On appeal, Ms. Iron Shell contends that the provisions in the personnel policy are ambiguous (Appellant's Brief, p. 22) and that there is an issue of material fact as to whether Ms. Iron Shell was rehired (Appellant's Brief, p. 23). This is the first time Ms. Iron Shell has presented these arguments. They were not presented to the District Court. This Court has repeatedly held that it will not consider arguments on appeal which were not presented to the Trial Court. In re T.E., 2002 MT 195, ¶ 23, 311 Mont. 148, ¶ 23, 54 P.3d 38, ¶ 23. The reasoning for such a rule is both obvious and necessary. The failure to present an argument deprives the District Court of an opportunity to consider it. More, MIC did not have an opportunity to respond to the arguments and present evidence in support of their defense. Applying the Court's rule in this scenario results in the refusal to consider these late arguments. Id.

However, in the event the Court deems to review the issues, summary judgment is still appropriate. First, the provisions are not ambiguous, as applied to Ms. Iron Shell. Ms. Iron Shell admits that she did not leave her employ and was

not "subsequently rehired" by MIC. App. 2, Iron Shell Dep. Tr. at p. 240-42. She was, at all times, employed by MIC. If she was not subsequently rehired, the provision concerning subsequent rehires does not concern her.

Second, because the provisions concerning the subsequent rehiring of employees does not apply to Ms. Iron Shell, it is irrelevant if she was rehired, promoted, or reassigned. Ms. Iron Shell states that the "facts tend to establish Esther was 'rehired.'" Appellant's Brief, p. 24. But, she was always employed by MIC. She did not leave her employ and could not be rehired, much less "subsequently rehired," as the policy states.

There is no provision in the personnel policy which limited MIC's right to place Ms. Iron Shell on probation with a legitimate business reason. The two provisions Ms. Iron Shell discusses do not limit the Board's authority. She was not subsequently rehired and the provision concerning probation is not limited to the executive director. Therefore, the Court's summary judgment determination was appropriate.

C. IN THE ALTERNATIVE, MIC DEFINED THE PROBATIONARY PERIOD AT THE OUTSET OF THE EMPLOYMENT RELATIONSHIP

As an alternative argument, MIC properly placed Ms. Iron Shell on probation because the parties appropriately defined the probationary period at the

beginning of the employment. The WDEA does not prohibit an employer from unilaterally extending an employee's probationary period. Hunter, at ¶ 21. The Hunter Court determined that the "employer must define the probationary period at the outset of an employment relationship, and the employer has the burden of showing that a probationary period was in effect at the time of the discharge." Id., 2002 MT 331 at ¶ 16 (quoting Whidden v. John S. Nerison, Inc., 1999 MT 110, ¶ 19, 294 Mont. 346, 981 P.2d 271). The Court found that these conditions "deter abusive expansion or extension of probationary periods after the fact, thereby avoiding the prospect of nullifying the protections provided to Montana workers by the Act." Id. As the employer in Hunter had properly defined the extension of the probationary period, the Court affirmed the trial court's summary judgment order for the employer. Id.

In the present case, MIC advised Ms. Iron Shell at least three times that the terms of the Executive Director position was probationary: (1) at the interview for the position, (2) in the August 2, 2002 letter offering the position to Ms. Iron Shell, and (3) during the August 26, 2002 employee orientation. Ms. Iron Shell agrees that she knew, prior to accepting the position, that the terms of the employment were probationary. App. 2, Iron Shell Dep. Tr. at p. 125.

Nevertheless, Ms. Iron Shell did not object and, instead, accepted the position. Id.

When Ms. Iron Shell agreed to the terms of the executive director position, a new employment relationship was created. She applied for the position and, knowing that it was probationary, accepted the terms. As such, the new contract was consummated with the contractual requirements of offer and acceptance. Mont. Code Ann. § 28-2-102. For this new contract of employment, the probationary term was clearly defined at the outset and, further, accepted by the employee at the outset. Finally, it is undisputed that Ms. Iron Shell was not offered the permanent position before the probationary period had ran. Therefore, Ms. Iron Shell, just like the claimant in Hunter, is not entitled to relief under the Act.

Ms. Iron Shell claims that she could not waive any rights by agreeing to the probationary period. Appellant's Brief, p. 29. This argument was not presented to the District Court. For the reasons discussed above, the Court's policy is to not address it. In re T.E., 2002 MT 195, ¶ 23, 311 Mont. 148, ¶ 23, 54 P.3d 38, ¶ 23.

In any event, the issue is not a waiver of a "public right." As discussed above, an "employer must define the probationary period at the outset of an employment relationship. . . ." Whidden, 1999 MT 110, ¶ 19, 294 Mont. 346, ¶ 19, 981 P.2d 271, ¶ 19. The parties in this case did that. When Ms. Iron Shell applied for, interviewed for, and ultimately accepted the executive director



position, the probationary period was defined at the outset of the employment of the executive director position. As such, the District Court properly granted summary judgment to the Missoula Indian Center.

**II. AS MS. IRON SHELL WAS A PROBATIONARY EMPLOYEE, THE DISTRICT COURT PROPERLY GRANTED SUMMARY JUDGMENT ON MS. IRON SHELL'S REMAINING WDEA CLAIMS**

As part of her complaint, Ms. Iron Shell contends that she was terminated for refusing to violate public policy and also that her termination was in violation of the personnel policy. However, as the District Court held, an employee who is on probation can be terminated for any reason. Mont. Code Ann. § 39-2-904(2)(a) states that "[d]uring a probationary period of employment, the employment may be terminated at the will of either the employer or the employee on notice to the other for any reason or for no reason." Since Ms. Iron Shell was properly on probation, Mont. Code Ann. § 39-2-904(2)(a) allows the Missoula Indian Center to terminate her for any reason. As such, she cannot state a claim for wrongful discharge.

Ms. Iron Shell contends that this Court declined "to adopt a district court ruling to the same effect as that advanced by the Center in Ritchie v. Town of Ennis, 2004 MT 43, 320 Mont. 94, 86 P.3d 11." Appellant's Brief, p. 26.

However, the Ritchie ruling is inapplicable. In Ritchie, the Court specifically noted that the amendments to the WDEA which are at issue in the present case "do

not apply to Ritchie's case, we decline to interpret the new language here."

Ritchie, ¶ 10, fn. 2.

When interpreting statutes, the Court's only function is to give effect to the intent of the Legislature. State v. Hamilton, 2002 MT 263, ¶ 14, 312 Mont. 249, ¶ 14, 59 P.3d 387, ¶ 14. When the Court interprets a statute, it determines legislative intent based on the plain and ordinary language used by the Legislature whenever possible. Contreras v. Fitzgerald, 2002 MT 208, ¶ 14, 311 Mont. 257, ¶ 14, 54 P.3d 983, ¶ 14. The Court must reasonably and logically interpret statutory language in a manner giving words their usual and ordinary meaning. Contreras, ¶ 14.

The "plain and ordinary language used by the Legislature" states that "[d]uring a probationary period of employment, the employment may be terminated at the will of either the employer or the employee on notice to the other for any reason or for no reason." Mont. Code Ann. § 39-2-904(2)(a). Ms. Iron Shell was a probationary employee. Mont. Code Ann. § 39-2-904(2)(a) allows the employer to terminate a probationary employee at will. MIC terminated Ms. Iron Shell and, due to her performance, had good cause to do so. There are no other issues to address.

### **III. MS. IRON SHELL CANNOT STATE A CLAIM FOR TERMINATION IN VIOLATION OF PUBLIC POLICIES OR A VIOLATION OF THE WRITTEN PERSONNEL POLICY**

In the alternative to the complete defense provided by Mont. Code Ann. § 39-2-904(2)(a), Ms. Iron Shell cannot state a claim for termination for her refusal to violate public policy or a violation of the written personnel policy. The District Court did not address this argument because it found the complete defense.

#### **A. MS. IRON SHELL WAS NOT TERMINATED IN VIOLATION OF A PUBLIC POLICY**

Pursuant to Mont. Code Ann. § 39-2-904(1)(b), a discharge is wrongful if "it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy[.]" The Act defines "public policy" as "a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule." Mont. Code Ann. § 39-2-903(7).

Ms. Iron Shell cannot find a public policy that she refused to violate. Instead, Ms. Iron Shell testified that she wanted to implement a drug testing policy for the Center and that the Board did not give her time to implement the policy. Ms. Iron Shell was asked:

Q: . . . What public policy did you refuse to violate?

A: Because I wanted to do urinalysis testing for the health department center to see if further illegal drug usage, which also, again, included alcohol according to the policies and procedures.

Q: So what public policy did you refuse to violate?

A: By not addressing that I knew what was going on.

Q: Let me see if I understand you correctly then. So the public policy that you refused to violate was that you were told that employees were using illegal drugs?

A: Yes. So I had to act on it.

\* \* \*

Q: . . . So the violation -- or you refused to violate public policy by not having enough time to complete drug testing of employees?

A: Yes.

\* \* \*

Q: But I guess what I'm interested in is did anybody ask you to violate a public policy?

A: I don't understand the question. Am I to violate the public policy by how?

Q: **Any way. I mean, did anyone ever say to you, Hey, Esther, we want you to violate a public policy, whatever public policy?**

A: No.

App. 2, Iron Shell Dep. Tr. at p. 264-267 (emphasis added).

Ms. Iron Shell's desire to create a drug testing policy is insufficient to state a

claim. In order to have a viable claim for wrongful discharge, Mont. Code Ann. § 39-2-904(1)(b) requires the employee to prove that she was terminated for refusing to violate public policy. Ms. Iron Shell cannot cite to a public policy that she was asked to violate.

Likewise, Ms. Iron Shell has presented no evidence to show that her termination was in any way related to her interest in drug testing the employees. Instead, the Missoula Indian Center has presented direct evidence that the termination was due to, among other things, her inability to maintain a positive work environment. App. 4, Kicking Woman Affidavit, ¶ 6.

In order to survive a motion for summary judgment, the party opposing the motion must present substantial credible evidence. Mysse v. Martens (1996), 279 Mont. 253, 262, 926 P.2d 765, 770. In Mysse, the Court held that, "[i]n order for an employee to defeat a motion for summary judgment on the issue of good cause, this Court requires the employee to prove that the given reason for the discharge, such as failure to perform the services the employee was hired to perform, is a pretext and not the honest reason for the discharge." Id. (citing cases). The employee's "[m]ere denial or speculation will not suffice, the non-moving party must show facts sufficient to raise a genuine issue." Id. (citing cases).

Ms. Iron Shell has failed to support her contention that she was terminated

for refusing to violate public policy is without merit under the Montana Act. Thus, as an alternative argument, the Missoula Indian Center is entitled to summary judgment on this issue.

**B. MS. IRON SHELL WAS NOT TERMINATED IN VIOLATION OF THE PERSONNEL POLICY**

Again, in the alternative to the complete defense provided by Mont. Code Ann. § 39-2-904(2)(a), Ms. Iron Shell's final allegation is that she was terminated in violation of the Missoula Indian Center's Personnel Policy. The only personnel policies presented in Ms. Iron Shell's brief are discussed above. As discussed above, these provisions were not violated. Thus, summary judgment on this alternative ground is also proper.

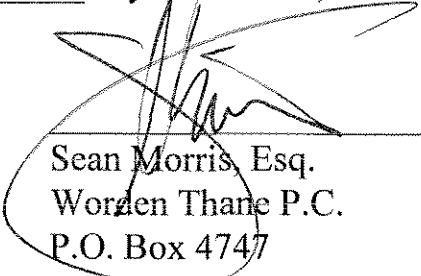
**CONCLUSION**

The District Court was correct. MIC properly placed Ms. Iron Shell on probation. With a legitimate business reason, it had the right to do so and Ms. Iron Shell has not contended that MIC did not have a legitimate business reason. During the term of this probation, Mont. Code Ann. § 39-2-904(2)(a) allows MIC to terminate Ms. Iron Shell for any reason. Unfortunately, it had to do so. The District Court's grant of summary judgment was and is proper.

WHEREFORE, the Missoula Indian Center hereby requests the Court affirm

the District Court's grant of summary judgment to the Missoula Indian Center and further award it its costs on appeal.

Respectfully submitted this 20<sup>th</sup> day of October, 2005.



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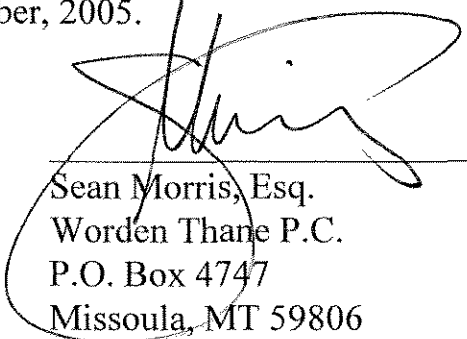
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### CERTIFICATE OF COMPLIANCE

Pursuant to Rule 27 of the Montana Rules of Appellate Procedure, I certify that this Brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double spaced; and the word count calculated by WordPerfect 8.0 for Windows, is not more than 10,000 words, not averaging more than 280 words per page, excluding certificate of service and certificate of compliance.

Dated this 20<sup>th</sup> day of October, 2005.



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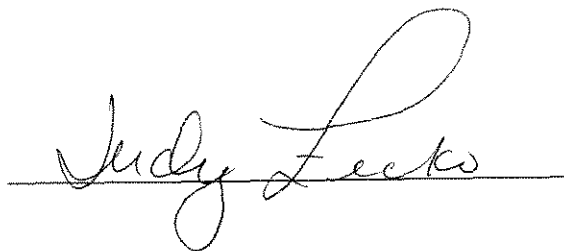
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CERTIFICATE OF SERVICE

I certify that on October 20, 2005, I served a copy of the preceding document by prepaid mail on the following:

Kevin E. Vainio, Esq.  
27 West Park Street  
Butte, MT 59701  
Attorney for Plaintiff/Appellant

A handwritten signature in cursive script, reading "Judy Leck", is written over a horizontal line.

/05013382.WPD



1 John S. Henson  
2 Department No. 2  
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4 Missoula, Montana 59802  
5 (406) 258-4772

FILED MAR 28 2005

SHIRLEY E. FAUST, CLERK  
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Deputy

7 <MONTANA FOURTH JUDICIAL DISTRICT COURT, MISSOULA COUNTY>  
8

9 ESTHER IRONSHELL

DEPT NO. 2

10 Plaintiff,

CAUSE NO. DV-03-937

11 -VS-

OPINION AND ORDER

12 MISSOULA INDIAN CENTER,  
13 INC.,

14 Defendant.

15 The matter before the Court is Defendant's motion for summary  
16 judgment. The motion has been briefed and argued and is ready for ruling.

17 A brief recitation of Plaintiff Ironshell's employment with Missoula Indian  
18 Center (hereinafter MIC) is in order. Ironshell begin her employment with  
19 MIC on May 1, 2001, as a cultural/prevention specialist, working in the  
20 Alcohol and Substance Abuse Program (ASAP). Ironshell successfully  
21 completed her probationary period of hire in this position.

22 In July of 2002, MIC opened applications for the executive director  
23 position. Ms. Ironshell applied for the position and was interviewed by the  
24 Board of Directors. Ms. Ironshell notes in her deposition that she was told the  
25 position would be subject to a 90-day probationary period. She indicates that  
26 she did not contest the probationary designation, even though she was hired  
27



1 in-house, and had already completed her probationary period in her current  
2 position.

3 On August 2, Ms. Ironshell was informed by letter that the Board wished  
4 to offer her the position as executive director. The letter also contained notice  
5 of the 90-day probationary period.

6 The parties concur that Ms. Ironshell's tenure was rocky from the  
7 inception. Many of the employees were defiant of Ms. Ironshell's authority.  
8 The Board's 30-day evaluation letter of September 25, 2002 to Ironshell  
9 indicated that the Board would allow her to continue in her probationary  
10 status, and set forth those areas needing improvement. There is no  
11 indication that Ironshell took exception to either the suggestions regarding  
12 improvement or the probationary status continuation.

13 Ms. Ironshell indicates in her deposition that she asked the Board to  
14 allow her resignation and to re-employ her in her previous position.  
15 Ultimately, after the September 25 meeting, Ironshell agreed to stay on, and  
16 drafted a letter resigning her previous position and accepting her position as  
17 executive director. These letters were drafted approximately one month after  
18 starting the executive director position. Ms. Ironshell indicated she drafted  
19 the letters at the request of the Board.

20 The Board issued a similar 60-day recommendation letter to Ironshell  
21 dated October 25, 2002, noting areas of needed improvement. The letter  
22 does not reference probationary status, but there is no indication the 90-day  
23 probationary period set forth in the August 2, 2002 hire letter had changed.  
24 Ms. Ironshell indicates in her deposition that no improvement in her treatment  
25 by employees during the 30-to 60-day period. Ironshell indicates that the  
26 October 25, 2002 letter was given to her by two Board members on  
27 November 11, 2002, after she was asked to come to the center to review the



1 evaluation.

2 In her affidavit, Ironshell indicates that she received a call from Board  
3 member Kicking Woman on November 14, 2002, asking Ironshell to meet  
4 with her and another Board member regarding evaluations and probationary  
5 employment. Ms. Ironshell states she received a call shortly thereafter by a  
6 community member informing her the Board intended to not offer her the  
7 permanent position of executive director. She informed Board member  
8 Killsback that she knew what was transpiring, and that they could simply mail  
9 her a letter rather than hold a meeting. Ironshell surrendered her keys and  
10 left the center.

11 Ironshell received the Board's letter the next day, November 15, 2002,  
12 confirming she had not received the permanent position. November 14,  
13 2002, was her 90th day of employment.

14 Defendant MIC contends that it did not violate the Wrongful Discharge  
15 from Employment Act, and that summary judgment is proper. Specifically,  
16 MIC notes that it defined the probation at the outset, and that Ironshell did not  
17 contest the probationary status. MIC further notes that it had a legitimate  
18 business reason for placing Ironshell on probationary status in her new  
19 position, given the past difficulties the Center had encountered in the  
20 executive director position.

21 It is clear that Ironshell knew that the executive position involved a set  
22 probationary period. Ironshell's employment was terminated within that  
23 probationary period. In both regards, MIC met the test set forth in *Whiddon v.*  
24 *John S. Nerison, Inc.*, 1999 MT 110, 294 Mont. 346. MIC further notes that  
25 the executive director position constituted a new position, requiring  
26 significantly different duties and talents. MIC contends any probationary  
27 period Ironshell might have completed in a different position had no bearing



1 on her fitness for the executive directorship. This probationary period did not  
2 constitute an extension of her previous probation from her ASAP coordinator  
3 position.

4 MIC further contends that it had a legitimate business reason for  
5 defining and demanding a probationary period of any new executive director  
6 hire, given that the position involved supervision, discipline, hiring and firing of  
7 employees, as well as other duties requiring attention, skill and diplomacy.  
8 As the MIC had encountered problems with past directors, a probationary  
9 period served a legitimate business purpose.

10 Plaintiff counter that the MIC had an internal recruitment policy, which is  
11 set forth as follows:

12 1. Recruitment and Appointment

13 a. Internal Recruitment – As soon as a vacancy occurs,  
14 or a temporary short-term position is determined  
15 necessary, a vacancy/promotion announcement shall  
16 be prepared and distributed to all components of the  
17 Center. The Center shall insure that the  
18 announcement is posted and that all employees are  
19 aware of it. The announcement shall remain open for  
20 five (5) working days, including one weekend. **Only**  
21 **applications from Center employees who have**  
22 **completed their probationary evaluation period**  
23 **shall be accepted at the time.** In the event that no  
24 one in-house staff is qualified for the position, the  
25 Executive Director has the authority to waive internal  
26 recruitment. (*Emphasis supplied by Plaintiff.*)

23 The internal recruitment policy does not state, as Plaintiff would imply,  
24 that a probationary period, once served, obviates any probationary period  
25 being tacked on to a new position. It simply states that no applications will be  
26 accepted for internal recruitments until an employee has first completed their  
27



1 probationary period.

2 Plaintiff also cites a provision of the probation evaluation period  
3 provision:

4 Center employees who leave for reasons other than  
5 disciplinary problems or unsatisfactory performance  
6 and who were employed by the Center for at least  
7 twelve (12) months and who are subsequently re-hired  
8 by the Center shall not be required to serve a  
9 probationary evaluation period.

10 That provision, standing alone, would lend great credence to Plaintiff's  
11 assertion that she was immune from a probationary evaluation designation.  
12 However, Plaintiff neglects to cite the next paragraph:

13 The Executive Director shall have the authority to  
14 initiate a probationary evaluation procedure in cases of  
15 staff promotion or re-assignment in order to evaluate  
16 the performance of the employee in their new position.

17 It is that paragraph that eviscerates Ironshell's argument. Given the  
18 promotion to executive director, it was within the power of the Board (acting in  
19 the stead of the executive director for obvious reasons) to initiate the  
20 probationary evaluation period.

21 The Board being authorized to institute a probationary evaluation period  
22 upon Ironshell, § 39-2-904(2)(a), MCA, is the controlling provision under  
23 Montana's Wrongful Discharge from Employment Act. That portion of the Act  
24 states:

25 During a probationary period of employment, the  
26 employment may be terminated at the will of either the  
27 employer or the employee on notice to the other for  
any reason or for no reason.

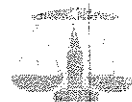


1 The Board was authorized under Montana law to terminate Ironshell for  
2 no reason, given her probationary status. Accordingly, summary judgment for  
3 Defendant is hereby granted.

4 DATED this 28TH day of March, 2005.

5  
6   
JOHN S. HENSON  
District Judge

7 cc: ✓ Sean Morris (Worden Thane)  
8 Kevin E. Vainio  
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**In The Matter Of:**

*Esther Iron Shell v.  
Missoula Indian Center, Inc.*

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*Esther Iron Shell  
September 22, 2004*

*Cause No. DV 03-937  
Missoula County*

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*Martin-Lake & Associates, Inc.  
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Page 11

(1) remember the name. It's been a while.

(2) Q: Okay. Anybody else?

(3) A: And she left — gosh, I really can't

(4) remember their names, but I have them written  
(5) down.

(6) Q: Where at?

(7) A: Where do I have them written down?

(8) Q: Yes.

(9) A: I have them written down and I keep a log  
(10) of all my employment through the years for my  
(11) scrapbook.

(12) Q: And then you became a data clerk at the  
(13) North American Indian Alliance?

(14) A: Yes.

(15) Q: And that's again in Butte?

(16) A: Yes.

(17) Q: And it looks like you worked there for  
(18) about a year and a half?

(19) A: Yes.

(20) Q: What were you doing at the North American  
(21) Indian Alliance?

(22) A: As it says, I was data clerk; I did some  
(23) of the billing and purchase orders, office work.

(24) Q: Doesn't look like you're working with  
(25) kids at all at this time?

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(1) A: No. No, but I was available for the  
(2) youth program and the health program as well as  
(3) the CD program. I was a PRN again for group  
(4) therapy for the CD program.

(5) Q: So why, if you wanted to go to Anaconda  
(6) and work with kids, why would you go to Butte if  
(7) you're not working with kids?

(8) A: Because that was my personal choice. I  
(9) wanted to work at the North American Indian  
(10) Alliance.

(11) Q: And then you left in April of 2001; can  
(12) you tell me why?

(13) A: Yes, I took the position with the ASAP  
(14) program at the Missoula Indian Center.

(15) Q: Okay. What was your interest in the ASAP  
(16) program?

(17) A: You know, I like my culture. It was what  
(18) I wanted to do. I wanted to work with the North  
(19) American Indians and, again, work with the youth.

(20) Q: In your first discovery answers you list  
(21) a ton of people with information. Let's go  
(22) through those. I'll hand you a document; tell me  
(23) if you've seen that before.

(24) A: Yes, I have.

(25) Q: Okay. Starting on page one, like I said,

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(1) you list a bunch of people that you say have  
(2) information. The first one is Florence Gardipee?

(3) A: Yes.

(4) Q: Are you looking for glasses?

(5) A: Yes. Okay.

(6) Q: When was the last time you talked to  
(7) Florence?

(8) A: I talked to her about two months — well,  
(9) about two months ago on the phone — actually,  
(10) that was before. Okay. It was June 20th of this  
(11) year.

(12) Q: Why do you remember it was June 20th?

(13) A: Because we had a family reunion and she  
(14) asked me about it, and we do keep in contact  
(15) because we do the Pow Wow circuit together  
(16) sometimes.

(17) Q: And this says she's a former chairperson  
(18) of the board of directors of Missoula Indian  
(19) Center?

(20) A: Yes.

(21) Q: That's kind of a run-on sentence, but it  
(22) looks like you're saying board members treat  
(23) employees as a probationary employee after  
(24) assuming the position of executive director. And  
(25) I guess I don't understand what that sentence is

Page 14

(1) supposed to mean. Can you tell me what's going on  
(2) here?

(3) MR. VAINIO: That may be my fault. I  
(4) haven't looked at that in a while.

(5) A: Okay. What it was was I had worked with  
(6) the Missoula Indian Center since May of 2001 and  
(7) when I accepted the position of executive  
(8) director, after I had accepted I didn't realize  
(9) that I did not have to be a probationary —  
(10) treated as a probationary employee, so that's what  
(11) that means.

(12) Q: (By Mr. Morris) Okay. What's that have  
(13) to do with Ms. Gardipee?

(14) A: Okay. Because she was opposed to this  
(15) and stated this to the board, that this was not  
(16) according to the policies and procedures, that I  
(17) should not be treated as a new employee.

(18) Q: And she told you she said that?

(19) A: Yes, she did.

(20) Q: When did she tell you that?

(21) A: She told me that as soon as I — it was  
(22) shortly after I received my termination papers  
(23) because I didn't feel — because after reading it,  
(24) again, I didn't feel that that was correct, and I  
(25) did ask her about it.



Page 23

(1) Q: So what was his intent in telling you?  
(2) A: I don't know.  
(3) Q: What was the context of the conversation?  
(4) A: I don't remember.  
(5) Q: Is it in your notes anywhere?  
(6) A: No. Let me see what I've got in my  
(7) notes. Okay. Should I disclose that these guys  
(8) were saying stuff?  
(9) (Discussion held off the record.)  
(10) A: What I did was Steve had — we met out of  
(11) by the kitchen, we have a little kitchen that's  
(12) right outside the executive director's office, and  
(13) we just said hi, started talking and I says, you  
(14) know, Steve, I said, if I need assistance  
(15) according to, you know, your position, I will  
(16) appreciate your input. Because I did have  
(17) questions previously from other community members  
(18) about the program. And I also did ask Jim Dempsey  
(19) if it would be okay if I ask general questions,  
(20) because I have to go through the chain of commands  
(21) because Jim Dempsey was a clinical coordinator and  
(22) he was Steve Loaning's supervisor.  
(23) Q: (By Mr. Morris) Okay.  
(24) A: So I talked to Steve, and I says, you  
(25) know, Steve, I'm hearing a lot of rumors that I'm

Page 24

(1) not comfortable with. And he said, What is that,  
(2) and I said, Well, I said, Tina Snell had told me  
(3) that she had heard that Kitty Felix and Debbie  
(4) Tatsey were jumping for joy because they could do  
(5) my staff evaluation, which was their chance to get  
(6) rid of me as executive director. Because — and  
(7) now I'm telling him this — I said because I  
(8) intended to address their illegal drug usage, and  
(9) that's when he says, Well, yeah, I heard — and  
(10) then I also heard that Kitty Felix and Debbie  
(11) Tatsey continued to complain about the executive  
(12) director to Luanne Kicking Woman and Denise Grant,  
(13) about me, without going through me, which is in  
(14) the policies and procedures, then I would take it  
(15) to the board. So that was the conversation. And  
(16) that's when Steve said, well, they intend — you  
(17) know, I heard they intend to replace you in 90  
(18) days anyway.  
(19) Q: So your conversation with Mr. Loaning was  
(20) that you were asking him, and you had already  
(21) cleared this through his supervisor?  
(22) A: Yes.  
(23) Q: You were asking him if you could talk to  
(24) him about the work that he does; is that right?  
(25) A: Right.

Page 25

(1) Q: And somehow that then went into a  
(2) conversation about whether or not you were going  
(3) to still be there?  
(4) A: Yes.  
(5) Q: What's the segue, what's the transition  
(6) between those two?  
(7) A: I said because I am going to be here for  
(8) as long as I can, and while I'm here I would like  
(9) to do the best job that I can, and I would like to  
(10) have your assistance. And then the conversation  
(11) turned to other things.  
(12) Q: Okay. And the rumors that you had heard  
(13) were that Debbie Tatsey and Kitty Felix were  
(14) jumping for joy because they got to review you?  
(15) A: Yes.  
(16) Q: And you believe that was in retaliation  
(17) to your intention for reporting them for illegal  
(18) drug usage?  
(19) A: Yes.  
(20) Q: Any other rumors that you were hearing at  
(21) this time?  
(22) A: Just that they were going to not keep me  
(23) in the position as executive director.  
(24) Q: Who's they?  
(25) A: Tina Snell and Steve Loaning.

Page 26

(1) Q: Okay. Tell me how did this conversation  
(2) with Ms. Snell in February of '02 have anything to  
(3) do with your hiring?  
(4) A: Because she was the administrative  
(5) assistant and we went through her for purchase  
(6) orders to get supplies or take trips or whatever  
(7) for the Missoula Indian Center. As we were  
(8) talking, I said — let me look at my notes. As we  
(9) were talking, I says, you know, Tina, I says, I  
(10) heard that they were — that Carol Meyers will no  
(11) longer be here and I would like to apply for the  
(12) position of executive director if in fact it is  
(13) true. She said — that's when she said that they  
(14) didn't intend to hire in-house. I said, I'm going  
(15) to try it anyway because, you know, it's what I  
(16) wanted to do.  
(17) Q: Though when you were hired in August of  
(18) '02 — I guess I don't understand how a  
(19) conversation in February then you were hired in  
(20) August would have any impact. Why was that a big  
(21) deal? You were in-house and you were hired.  
(22) A: Why was that a big deal?  
(23) Q: Yeah.  
(24) A: Because Tina also said that one Missoula  
(25) Indian Center board of directors did not intend to

9

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[1] Q: And you just called her that one time?  
[2] A: Yes.  
[3] Q: And so you talked to her before —  
[4] A: Actually, I called her and left her a  
[5] message and she called me back, so yeah.  
[6] Q: Okay. You talked to her while you were  
[7] still the ASAP coordinator?  
[8] A: Yes.  
[9] Q: And I assume you don't believe that's any  
[10] sort of breach of etiquette; is that right?  
[11] A: Not when we were talking about careers,  
[12] and she did not go into — she didn't tell me  
[13] anything that was going on with the board.  
[14] Q: So in your mind it's okay for the board  
[15] to talk to staff members if they're talking about  
[16] careers?  
[17] A: Oh, yeah, that's totally acceptable.  
[18] They are still community members. It's when you  
[19] start talking about Missoula Indian Center  
[20] business is when it's a breach of confidentiality.  
[21] Q: Why is it a breach of confidentiality?  
[22] A: Or I should say not following policy,  
[23] excuse me.  
[24] Q: And just because it's a chain-of-command  
[25] issue?

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[1] A: Because it's in the policy, yes.  
[2] Q: Okay. Yeah, and again, the policy we're  
[3] talking about is the board of director policy,  
[4] right?  
[5] A: Yes.  
[6] Q: This isn't, what, an employee policy?  
[7] It's just the board of directors' policy?  
[8] A: It says — I don't have it with me. Do  
[9] you have the —  
[10] MR. VAINIO: Policy manual.  
[11] A: Yeah, the policy manual.  
[12] MR. VAINIO: I don't think I do.  
[13] A: You don't. I meant just that part.  
[14] Q: (By Mr. Morris) You're talking about the  
[15] one about the board of directors?  
[16] A: Yeah. Because I did get a copy of that.  
[17] MR. VAINIO: I think we gave it to them  
[18] in discovery; did we?  
[19] A: Yes.  
[20] Q: (By Mr. Morris) Take a look at the  
[21] document that I'm handing you.  
[22] A: Okay.  
[23] Q: Is that the board policy you're talking  
[24] about?  
[25] A: Of the board and staff on page 7, yes,

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[1] the second paragraph. Staff members shall not  
[2] circumvent the authority of the director by going  
[3] to the board with a complaint or trying to  
[4] persuade an individual board member to be a  
[5] special advocate for some aspect of the agency's  
[6] operation.  
[7] Q: Is this the board of director policy  
[8] you're talking about?  
[9] A: Yes.  
[10] Q: Let's go ahead and mark that as Exhibit  
[11] 1.  
[12] EXHIBITS:  
[13] (Deposition Exhibit No. 1 marked for  
[14] identification.)  
[15] Q: (By Mr. Morris) And Ms. Iron Shell, my  
[16] understanding, from what you're saying, is that  
[17] this is — like I said, this is the board of  
[18] directors' policy, right?  
[19] A: This is the board of directors' policy,  
[20] yes.  
[21] Q: This is not an employee policy?  
[22] A: It says the board and staff. I believe  
[23] it's both. That's the way I understand it.  
[24] Q: Why do you understand it that way?  
[25] A: Because it says the board and staff.

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[1] Q: So are employees given this?  
[2] A: Yes. No, they are not given the board —  
[3] you know, I didn't get a copy. I did read it.  
[4] It's available at the Center.  
[5] Q: And where you say it's board and staff is  
[6] that paragraph on page 7?  
[7] A: Yes.  
[8] Q: Okay. And it says, Staff members shall  
[9] not circumvent the authority of the director by  
[10] going to the board, right?  
[11] A: Yes.  
[12] Q: Does it say anything about the board  
[13] going to the staff?  
[14] A: Yes, it says on the previous paragraph,  
[15] The board will respect the organizational chain of  
[16] command when interacting with staff members.  
[17] Q: And it doesn't look like we have the full  
[18] policy here. In fact, it looks like we have kind  
[19] of a random selection of pages; is that right?  
[20] A: Yes.  
[21] Q: And you say you've seen the entire board  
[22] policy?  
[23] A: I read it while I was an employee.  
[24] Q: When was that?  
[25] A: When I started in May of 2001.

10

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[1] Q: Now, it looks like parts in this are  
[2] highlighted, do you know who highlighted those?

[3] A: I did, because that's what I was  
[4] referring to.

[5] Q: Okay. Do you think there's times that  
[6] the board should talk to the staff about what the  
[7] executive director is doing?

[8] A: Not if it says in the policy and  
[9] procedure that that should not be done.

[10] Q: So your answer is never, no matter what  
[11] the circumstances are, the board should never talk  
[12] to the staff?

[13] A: Only if it pertains to Missoula Indian  
[14] Center business, they should go through the  
[15] executive director.

[16] Q: And so if they want to see how the  
[17] executive director is doing, they only should talk  
[18] to the executive director and nobody else; is that  
[19] your position?

[20] A: Would you repeat that again?

[21] Q: Sure. If the board of directors want to  
[22] see how the Missoula Indian Center executive  
[23] director is doing, your position is, correct me if  
[24] I'm wrong, that they — the board of directors  
[25] should only talk to the executive director and no

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[1] one else?

[2] A: I don't fully understand.

[3] Q: Okay.

[4] A: Because that's, you know, I could answer  
[5] that twice.

[6] Q: Tell me how.

[7] A: Because they should go through the  
[8] employees when it has to do — if they're friends,  
[9] if they're going to go to a Pow Wow. As far as  
[10] Missoula Indian Center business, no, it clearly  
[11] states that they should — okay. Now, I'm not  
[12] answering your question. I didn't write the  
[13] policies. I don't know how they should do that.

[14] Q: Okay.

[15] A: I follow what I'm given. So I don't  
[16] know, I'm answering a question for the whole  
[17] community, and I can't do that.

[18] Q: Well, I'm curious about your position.  
[19] Your position is the board of directors should  
[20] never talk to staff about Missoula Indian Center  
[21] procedure.

[22] A: That's what it says. That's what it says  
[23] in the book.

[24] Q: And that's your position?

[25] A: Yes.

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[1] Q: And so the board of directors have to  
[2] talk to the executive director. What if the  
[3] executive director is lying to the board about how  
[4] he or she is performing?

[5] A: Good question.

[6] Q: Do you have any — what should the board  
[7] do then?

[8] A: Again, that's a community question. You  
[9] know, it would — I don't know.

[10] MR. VAINIO: Again, I believe that's  
[11] irrelevant, there's nothing to show that Esther  
[12] ever lied to the board about —

[13] Q: (By Mr. Morris) But you don't know what  
[14] the board should do in that scenario?

[15] A: Again, you're asking me to answer for the  
[16] whole community, and I can't do that. You know,  
[17] that's their law.

[18] Q: I'm sorry, that's their what?

[19] A: That's their law. What we do is for the  
[20] community. They make the rules.

[21] Q: I have a hard time because you have — I  
[22] don't always know who you're referring to. So  
[23] "they" make the rules, you mean the board makes  
[24] the rules?

[25] A: Community members and the — yes.

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[1] Q: So the community members make the rules?

[2] A: They have to vote on it. They were  
[3] already implemented many, many years ago.

[4] Q: And of course the board policy we're  
[5] talking about just says the board will respect the  
[6] organizational chain of command. It doesn't say  
[7] that they can't talk to staff members, does it,  
[8] about Missoula Indian Center information?

[9] A: No, it doesn't. I don't see it written  
[10] there.

[11] Q: And of course board of director members  
[12] are going to be at the Missoula Indian Center, are  
[13] actually community members?

[14] A: Sure.

[15] Q: Did anybody ever mention to you, Hey, the  
[16] board is going to be around quite a bit, are you  
[17] okay with that?

[18] A: No, I know that they would be because  
[19] they are community members and they do use the  
[20] services.

[21] Q: But nobody on the board — your testimony  
[22] is nobody on the board said the board of directors  
[23] will be at the Center quite a bit?

[24] A: No.

[25] Q: You began work at the Missoula Indian

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(1) Center I think in May of 2001?  
(2) A: Yes.  
(3) Q: And what was your job title?  
(4) A: Cultural prevention specialist.  
(5) Q: What was your duties?  
(6) A: To work with the youth to — as a  
(7) cultural specialist to concentrate and implement  
(8) the culture of the North American Indians and  
(9) prevention for drug and alcohol abuse or use.  
(10) Q: So what was a typical day like for you?  
(11) A: Well, I made contacts with the  
(12) organizations, just like the schools, I developed  
(13) two Indian clubs in the Hellgate middle school and  
(14) the Washington Middle School. So I did a lot of  
(15) contact with community organizations to — and  
(16) especially initially, because I wanted to  
(17) introduce myself — and as far as going to meet  
(18) with them personally. And as things started  
(19) rolling was to ask, like when I came up with the  
(20) idea — because they had no Indian club at the  
(21) Washington Middle School, and I wanted to get it  
(22) started because there were a lot of students there  
(23) from the university and from the community that  
(24) attended there, youth, Native American youth. So  
(25) that was what I did, and I met with the principal.

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(1) And so — you know, but that took time.  
(2) And then when it got rolling then I went  
(3) ahead and did Indian club meetings once a week  
(4) with the youth. And of course not during their  
(5) class time, it was usually during the lunch  
(6) period, so we could eat lunch together.  
(7) Q: At that time you were making \$10 an hour?  
(8) A: Yes.  
(9) Q: Is that what you were hired at?  
(10) A: No, I was hired I believe it was 9.50.  
(11) Q: And so somewhere along the line you had  
(12) got a 50-cent raise?  
(13) A: That was after I completed the  
(14) probationary period and I was given a raise.  
(15) Q: What did you think of the job?  
(16) A: I thought it was very rewarding, I  
(17) enjoyed it. And working with the community and,  
(18) again, working with my culture was especially very  
(19) rewarding.  
(20) Q: It looks like you made monthly reports  
(21) while you were in that job; is that right?  
(22) A: Yes.  
(23) Q: Who received those reports?  
(24) A: Jim Dempsey, my supervisor.  
(25) Q: What was the purpose of the reports?

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(1) A: Because we had to do year-end reports  
(2) because when they gave us the money to do — we  
(3) said we would do this, and I had to show that I  
(4) was actually using the money for what they gave us  
(5) the money for.  
(6) Q: Who gave you the money?  
(7) A: Indian Health Service through Billings.  
(8) Q: Sure. And it looks like, and you alluded  
(9) to this earlier, in May of '02 you were having  
(10) some problems with some health department  
(11) employees, right?  
(12) A: Yes.  
(13) Q: What was the problems? What was going  
(14) on?  
(15) A: I had known the health department staff  
(16) for many years before I started working at the  
(17) Missoula Indian Center. One health department  
(18) staff, her sister is married to my nephew. We  
(19) didn't know each other that well, and when I  
(20) started working I was — we would talk about  
(21) things that we had disagreements on, like maybe  
(22) the money should be used for this, the money  
(23) should be used for that. And I said, Let me run  
(24) my program the way I wanted to and they — I  
(25) believe they tried to help me, which I accepted

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(1) and I appreciated. But when I made the decision,  
(2) I would get criticism, why did you do it this way  
(3) when you should have done it that way, and all  
(4) they were were my colleagues, not my supervisor.  
(5) And I again, had to tell them I appreciated their  
(6) input, but I will make the decision, it was my  
(7) program or I work for that program and that I  
(8) would implement it the way I saw fit.  
(9) So the argument started from there. It  
(10) was small at first and then it got to the point  
(11) where one — when I would walk — like, for  
(12) instance, I'd walk down the hall and they would  
(13) say, Look at her trying to do her job, you know,  
(14) even though she doesn't know how, you know, they  
(15) should get someone in there that will do the job  
(16) properly, just little snide remarks that I didn't  
(17) appreciate.  
(18) Q: So what did you do about that?  
(19) A: I let it go for a long time because I  
(20) thought, you know, I was a new employee. And then  
(21) it got to the point where I said, you know, enough  
(22) is enough, we are professionals, we do not need to  
(23) be treating each other this way. So I went to my  
(24) supervisor. I was telling him off and on that I  
(25) realize that I'm new and, you know, they — we

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(1) need to develop a working relationship and that's  
(2) the way it developed.

(3) Q: Okay. And who were the employees you  
(4) were having a problem with?

(5) A: Debbie Tatsey and Kitty Felix.

(6) Q: Are these the same two you believe were  
(7) using illegal drugs?

(8) A: Yes.

(9) Q: When did you find out about this drug  
(10) thing?

(11) A: It was in July of 2001. I had — because  
(12) again, I had known them previously and this was  
(13) before things really started escalating  
(14) negatively. One of the staff member's sister was  
(15) a bartender at the Tenth Street Tavern, and I had  
(16) gone through the years off and on to visit, to see  
(17) them, because like I said we have been connected  
(18) for many years.

(19) So I went in and I saw Kitty's car out  
(20) there so I went in and I spoke with them. And at  
(21) that point that's when Marquetta Felix said, Come  
(22) with me to the bathroom. I went with her to the  
(23) bathroom and she handed me a pipe filled with  
(24) marijuana and said, Here, and I said, no. I would  
(25) not take this position if I were doing stuff like

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(1) this. I says, Come on, and besides that, I have  
(2) signed a statement stating that I would do a UA  
(3) for testing if need be. I understand what I have  
(4) done. And she said, oh, okay, and then she smoked  
(5) and we went out, back out to the bar.

(6) But previous to that I have been at  
(7) Debbie Tatsey's house and have observed her  
(8) smoking off and on with others through the years.  
(9) And she has, to my — she's still a — up to that  
(10) point anyway, she was still a user. And then  
(11) furthermore, in I think it was July — it was  
(12) again in July, shortly after that, I went to lunch  
(13) with Kitty Felix and she said that her and Debbie  
(14) occasionally take rides over by the hills and  
(15) smoke and then go back to work. I said, You still  
(16) do that, and she said yes. And she said this has  
(17) been going on for eight years, since I started my  
(18) employment.

(19) Q: And that was again in July of '01?

(20) A: 2001, yes. Go ahead.

(21) Q: Why didn't you tell anybody about that at  
(22) that time?

(23) A: I was ASAP coordinator and it was — you  
(24) know, I was — why would I? You know, I was still  
(25) on probation.

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(1) Q: Well, you eventually thought it was a big  
(2) enough deal to say something?

(3) A: When I became executive director, if I  
(4) did, I would actually address that. I had no  
(5) authority whatsoever. And even if I did, it would  
(6) have been my word against hers. And I really  
(7) don't believe anyone would have believed me  
(8) anyway. I was a new community member, a new  
(9) employee. So that's why I didn't say anything.

(10) Q: And so were you friends with Debbie  
(11) Tatsey and Kitty Felix?

(12) A: Yes.

(13) Q: But eventually it sounds like that  
(14) relationship soured?

(15) A: Yes.

(16) Q: Why?

(17) A: Because they were trying to — well,  
(18) attempting to tell me how to do my job, they were  
(19) making snide remarks throughout my employment and  
(20) that's why.

(21) Q: And of course they also wrote reports  
(22) saying that you were elbowing them in the back;  
(23) were you doing that?

(24) A: No. No, I wasn't. I remember that  
(25) incident. I accidently bumped, I believe it was

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(1) Debbie. I can't remember who it was because it  
(2) wasn't even — it was either Debbie or Fritz, but  
(3) that was an accident and I do remember that  
(4) incident. And I believe that's when they started,  
(5) you know, when I did apply for the director  
(6) position in March of 2002 is when a lot of this  
(7) stuff started with Kitty, Debbie and then Fritz,  
(8) who — Kathryn Reddies, when they hired later.  
(9) And things started escalating from there. Because  
(10) Debbie kept saying I was no director, that I was  
(11) not a leader and I couldn't do the job. So that's  
(12) when things started going bad.

(13) Q: I assume she's entitled to her opinion,  
(14) right?

(15) A: Of course, just as I am.

(16) Q: True. And so you also had an issue with  
(17) Kathryn Reddies?

(18) A: Yes.

(19) Q: How so?

(20) A: There were several. Actually, when she  
(21) started working there was — actually, we got  
(22) along very well. And then as I continued to have  
(23) disagreements with Kitty and Debbie, then Kathryn  
(24) Reddies of course started to — you know, she  
(25) started — she didn't really say a lot but she

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(1) also started to avoid me and sometimes our  
(2) programs did have to work together. I had to  
(3) refer some of my clients to her and vice versa.  
(4) And it was — you know, it wasn't getting done.  
(5) And then, you know — you know, the dirty looks.  
(6) And so I thought, you know, I better not approach  
(7) her right now because I need to ask her a  
(8) question. So then I would go to Debbie or Kitty.  
(9) I still had to work with them. We did get some  
(10) things done.

(11) Q: And then, you know, Debbie is saying you  
(12) tried to trip her when she had a plate full of  
(13) food; did you do that?

(14) A: No, I did not.

(15) Q: Why would she say you did?

(16) A: Because her and I were not getting along.  
(17) When, in fact, she was the one that was making  
(18) snide remarks. I did not try to trip her. That  
(19) is very unprofessional. I am not that immature.

(20) Q: And so if she says that you tried to trip  
(21) her, you're going to dispute that?

(22) A: Yes.

(23) Q: And if she says you elbowed her in the  
(24) back, you're going to say you unintentionally did  
(25) that?

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(1) A: Yes, I did unintentionally, and I will  
(2) admit that unintentionally.

(3) Q: When you guys were in Bozeman and these  
(4) guys would talk about how you would walk up and  
(5) just sit and stare at them; did you do that?

(6) A: No, I did not. I stood there because I  
(7) thought they were talking about health department  
(8) in regards to ASAP stuff, which was my position,  
(9) and then they acted like they didn't want me there  
(10) anymore, so I would leave. We did not get along.  
(11) Debbie and I did not get along.

(12) Q: Said that you showed up and were dancing  
(13) while they were trying to talk and were getting in  
(14) everybody's face?

(15) A: Again, that was very immature, I would  
(16) not do something like that.

(17) Q: But she says you did.

(18) A: Well, of course.

(19) Q: It looks like there's a couple of them  
(20) that say you did.

(21) A: Of course. You've got to remember they  
(22) are the health department staff.

(23) Q: So?

(24) A: So they have to stick together.

(25) Q: Why?

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(1) A: Because they have to work together and  
(2) they have to stick together, that's why.

(3) Q: They have to stick together just because  
(4) they work together?

(5) A: I believe so.

(6) Q: Well, wouldn't you hope people would have  
(7) more integrity than that?

(8) A: Oh, yes, definitely. I would hope so.

(9) Q: You wouldn't stick together with somebody  
(10) just because you worked with them?

(11) A: Not if I thought it was wrong, I would  
(12) not do something like that, no.

(13) Q: So it's not — you're not saying they had  
(14) to stick together just because they worked  
(15) together, you're just saying that's the kind of  
(16) people they were?

(17) A: Both.

(18) Q: Okay. But it looks like in May you guys  
(19) ended up getting this somewhat resolved; is that  
(20) right?

(21) A: Yes, that's when I filed my grievance and  
(22) Cheryl again asked me to rescind, which I did.

(23) Q: Why?

(24) A: Because I thought we could get beyond  
(25) this and start acting more mature because I was a

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(1) willing person to do that.

(2) Q: So you thought you could get past it and  
(3) not have to worry about it again?

(4) A: I thought we could all get past it. I  
(5) know I could.

(6) Q: Were you able to do that?

(7) A: No, I was not able to do that because the  
(8) harassment continued.

(9) Q: How so?

(10) A: When I attempted to go in and talk with  
(11) Debbie and tell her, you know, we should probably  
(12) just put everything behind us and get these jobs  
(13) done, she literally flipped out on me and I had to  
(14) leave her room. She started yelling, throwing her  
(15) hands up, and I practically ran out. So I decided  
(16) to keep my distance and, you know, slowly — you  
(17) know, because we still have to work together. So  
(18) I kept my distance but it was real — I should say  
(19) we didn't actually start — throw words at each  
(20) other again because we did a few snide remarks  
(21) here and there, but we did actually do some work,  
(22) you know. For instance, when we had — when we  
(23) had reporting to do we would make sure it was  
(24) done. They would ask me, I would ask them, do you  
(25) have the reports, yes, we will get these reports,

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[1] Q: So after May it sounds like it did get  
[2] better?  
[3] A: Somewhat, yes.  
[4] Q: And you said we did snide remarks, it  
[5] sounds like you were doing snide remarks as well?  
[6] A: Yes, I did.  
[7] Q: Why would you do that?  
[8] A: Because when they told me that I could  
[9] not be a leader, I said, oh, yes, I can, and  
[10] possibly better than you.  
[11] Q: And how does snide remarks make you a  
[12] leader?  
[13] A: Good question. It doesn't.  
[14] Q: Okay.  
[15] A: That was before I assumed the position  
[16] of executive director.  
[17] Q: And you first applied for the position  
[18] of executive director in March of '02,  
[19] right?  
[20] A: Yes.  
[21] Q: I'm going to hand you what we will  
[22] shortly mark as Exhibit 2, take a look at it.  
[23] Let's focus on the first page for now. Let's go  
[24] ahead and mark that.

EXHIBITS:

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[1] (Deposition Exhibit No. 2 marked for  
[2] identification.)  
[3] Q: (By Mr. Morris) So the first piece of  
[4] Exhibit 2, correct me if I'm wrong, is your first  
[5] application for the executive director position?  
[6] A: Yes.  
[7] Q: Why did you want to be the executive  
[8] director?  
[9] A: Because I was the first secretary of the  
[10] Indian Center in Anaconda in 1972 and I decided to  
[11] go to college and I wanted to become a director of  
[12] an urban center and to work — for however  
[13] productive I would be, and then I wanted to use  
[14] that experience and use that as my dissertation to  
[15] get my Ph.D., which I anticipated in the future.  
[16] And besides that, it's working with my culture and  
[17] I like my culture. That's who I am.  
[18] Q: So you wanted to become the executive  
[19] director as a stepping stone to getting your  
[20] Ph.D.?  
[21] A: If possible.  
[22] Q: If possible.  
[23] A: If possible. If not, I would have been  
[24] content to stay there as long as, again, I would  
[25] be productive.

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[1] Q: And was Carol Meyers the outgoing  
[2] executive director?  
[3] A: Yes.  
[4] Q: And before her or after her Ms. Smoker  
[5] was the interim executive director, right?  
[6] A: Yes.  
[7] Q: Do you know why Ms. Meyers left the  
[8] position?  
[9] A: No, she did not tell me. All we received  
[10] was that she was no longer the director.  
[11] Q: After this March 6th application you were  
[12] not hired to be executive director, right?  
[13] A: Right.  
[14] Q: Who got the position?  
[15] A: Nobody. We had Cheryl Smoker as acting  
[16] director, as you said before.  
[17] Q: What did you think about not being hired  
[18] for the position?  
[19] A: I thought, well, if they advertise again,  
[20] I would reapply.  
[21] Q: Which you did in July, right?  
[22] A: Yes.  
[23] Q: It looks like that's the next page on  
[24] this Exhibit 2; is that right?  
[25] A: Yes.

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[1] Q: Did you talk to anybody prior to making  
[2] this application?  
[3] A: I talked with Cheryl Smoker and asked  
[4] her, I says, I intend to apply for the position of  
[5] executive director and that as soon as it was  
[6] advertised that it would be posted because it  
[7] would go through her. And that was all I had  
[8] spoken with.  
[9] Q: Anybody else?  
[10] A: I did tell in — yes, I did speak with  
[11] Debbie Tatsey and Marquetta Felix, as well as Jim  
[12] Dempsey. I says, you know, I am seriously  
[13] thinking about applying again for the executive  
[14] director position. So yes, I did.  
[15] Q: Why would you tell Debbie Tatsey and  
[16] Kitty Felix?  
[17] A: Because we talk about — at that time we  
[18] were still getting along and talking in  
[19] conversation.  
[20] Q: Okay. What time are you talking about?  
[21] A: I'm talking about the period between  
[22] February up until I had applied in March. And  
[23] then — I did not speak about it again after March  
[24] because when Debbie Tatsey and Kitty Felix  
[25] realized that I was going to go for executive



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(1) history. Debbie Tatsey is — you know, there were  
(2) other things that happened within our family that  
(3) I believe had an impact on the way she worked with  
(4) me and saw me.

(5) Q: What is that?

(6) A: What is that what?

(7) Q: What is that that went on in the family?

(8) A: In my family? My nephew broke her jaw  
(9) many years ago.

(10) Q: That sounds serious.

(11) A: And she kept bringing it up. She said  
(12) your nephew broke my jaw and I had to wear a wire.

(13) I said, I wasn't even around. I didn't even know

(14) what happened. I didn't even know — I forgot

(15) about it. I heard about it 20 years ago but it

(16) kept coming up when I started working at the

(17) Missoula Indian Center, so that's what I'm talking  
(18) about.

(19) Q: Anything else?

(20) A: That they just didn't really get along.

(21) Q: Who's they?

(22) A: My nephew, her brother-in-law, and  
(23) Debbie.

(24) Q: Doesn't sound like they got along.

(25) A: No.

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(1) Q: Is that all the people you talked to  
(2) before you submitted your application on March  
(3) 6th, 2002?

(4) A: Well, I talked to my son and he said that  
(5) would be a very good idea.

(6) Q: Sure. Anybody else?

(7) A: I talked to my brother because he is also  
(8) a graduate of Montana State. And I said, you  
(9) know, I'm not getting any younger, I would like to  
(10) do things before I'm forced — before society says  
(11) I have to retire, and he was very supportive. And  
(12) he says you're not going to know if you can do it  
(13) until you do it. And I also spoke with my sister.

(14) Q: Let's just stick with — I guess are  
(15) those people all community members?

(16) A: No. They are my brother and my son.

(17) Q: But they could be community members,  
(18) right?

(19) A: My sister is a community member.

(20) Q: Other than your sister who else did you  
(21) talk to?

(22) A: Jocelyn Little Boy, the receptionist, and  
(23) I did tell her to let me know when the  
(24) advertisement — when Cheryl actually did it,  
(25) because Cheryl was extremely busy. And I said,

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(1) Jocelyn, if she doesn't get to me would you let me  
(2) know when you're going to post that up, because  
(3) she would probably be the one to go put it on the  
(4) wall.

(5) Q: How did you hear about the posting?

(6) A: I saw it.

(7) Q: Okay.

(8) A: Before they could tell me.

(9) Q: Anybody else you talked to?

(10) A: Not that I recall.

(11) Q: And of course you said you talked to Tina  
(12) Snell in February of '02, right?

(13) A: Yes.

(14) Q: Okay.

(15) A: I said if it comes open then I will do  
(16) that, then I will apply for the position. I have  
(17) always talked about it. I could go back 30 years.

(18) Q: But not at the Missoula Indian Center?

(19) A: I said anywhere, it could have been  
(20) Missoula, Great Falls, Helena.

(21) Q: I'm just focusing on the Missoula Indian  
(22) Center. Anybody other than Tina Snell and the  
(23) people we just talked about that you talked to  
(24) prior to applying in March 6 of 2002?

(25) A: Peggy Cochran, who was administrative

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(1) assistant. I do believe I talked to everybody at  
(2) the Missoula Indian Center about applying.

(3) Q: Okay. Anybody negative about you  
(4) applying?

(5) A: Just Debbie.

(6) Q: Well, it didn't sound like she was  
(7) negative, she just said that the board of  
(8) directors was hard to work with and you'd have  
(9) seven bosses.

(10) A: Okay. But later on, like I said —  
(11) actually, it was before that when she would make  
(12) snide remarks that I was, you know, not a leader  
(13) and whatever.

(14) Q: So before you applied she said you were  
(15) not a leader?

(16) A: Yes.

(17) Q: Okay. And then with regard to your July  
(18) 12th application, who did you talk to before you  
(19) applied there?

(20) A: Cheryl Smoker and Jocelyn, and that's  
(21) when I said let me know when they post the  
(22) advertisement.

(23) Q: Anybody else?

(24) A: No, because prior to March is when I did  
(25) discuss that with Debbie and Kitty and Jim and



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[1] was?  
[2] A: At the Missoula Indian Center.  
[3] Q: What kind of questions did you get?  
[4] A: I had questions of, you know, what would  
[5] I do to expand or improve services at the Missoula  
[6] Indian Center, and of course I said I would like  
[7] to see a health clinic opened, you know, providing  
[8] the funds are available. I was asked what — I  
[9] was given a test on, you know, the budget, you  
[10] know, they gave me a micro test on — I was issued  
[11] so much money, what would I do with it, how would  
[12] I spend it, so I did that. And I do believe they  
[13] did ask me, you know, about priority setting and  
[14] again, I said, being in positions of a supervisor,  
[15] I'm usually — you know, I'm subject to mistakes,  
[16] I'm usually very good about prioritizing tasks and  
[17] knowing what has to be done, especially with  
[18] deadlines. And I can't remember much after that.  
[19] Q: How long do you think it lasted?  
[20] A: About an hour, or maybe even less.  
[21] Q: Were you told anything about the  
[22] position?  
[23] A: I was told that I would assume  
[24] responsibilities on August 16th with — if I  
[25] were — or it would start in two weeks if I were

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[1] offered the position, and that I would be in the  
[2] management position and that, you know, of course  
[3] they were the board, and do I know, you know, my  
[4] employees and, you know, just general questions,  
[5] but it was pretty formal.  
[6] Q: Okay. Were you told what the position  
[7] paid?  
[8] A: Yes. And with a raise after — if I were  
[9] offered the position I would get a raise.  
[10] Q: What do you mean if you were offered the  
[11] position?  
[12] A: If I had a satisfactory interview or if I  
[13] was offered, I mean —  
[14] Q: Oh, so you were told if you were offered  
[15] the position of the executive director on August  
[16] 16th you would get a raise?  
[17] A: No.  
[18] Q: Okay.  
[19] A: If I was offered the position, after my  
[20] probationary period I would get a raise.  
[21] Q: Okay. Did they say how much?  
[22] A: No.  
[23] Q: What did they tell you about the position  
[24] being probationary?  
[25] A: They said it would be probationary for

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[1] three months, 90 days.  
[2] Q: Anything else?  
[3] A: No.  
[4] Q: What did you think about a probationary  
[5] period?  
[6] A: I thought that was in the policy and so I  
[7] said okay, because that's usually what happens  
[8] when a new employee is hired.  
[9] Q: So when you were told it was probationary  
[10] you said okay?  
[11] A: I said — I didn't say anything.  
[12] Q: You were still interested in the spot  
[13] even though it was probationary?  
[14] A: Yes.  
[15] Q: After your interview what did you think  
[16] your chances were?  
[17] A: You know, there was a lot of competition  
[18] out there. I was willing to accept whether I did  
[19] or didn't get it. And by accepting that I didn't  
[20] get it, I would hope another more qualified person  
[21] would step into the position.  
[22] Q: Did you know who the other applicants  
[23] were?  
[24] A: No. I didn't know, that was not common  
[25] knowledge.

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[1] Q: Anybody else in-house apply for it?  
[2] A: No.  
[3] Q: Any idea why Debbie Tatsey or Kitty Felix  
[4] didn't apply?  
[5] A: No.  
[6] Q: They ever talk to you about that?  
[7] A: No.  
[8] Q: Just —  
[9] A: They just said they liked their jobs.  
[10] Q: Okay. When were you told that you got  
[11] the position?  
[12] A: I was given a letter on, I believe it was  
[13] August 2nd.  
[14] Q: If you turn to the next page which is  
[15] marked PRO9 of that Exhibit 2, it looks like it's  
[16] dated August 2nd, right?  
[17] A: Yes.  
[18] Q: Was this mailed to you or handed to you?  
[19] A: It was given to me in my mailbox at the  
[20] Missoula Indian Center.  
[21] Q: I got to believe you were pretty excited?  
[22] A: Yes, very happy.  
[23] Q: I got to think you were a little nervous?  
[24] A: Oh, yes, because I knew I had a lot to  
[25] learn.

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[1] Q: And it looks like you started working  
[2] with the interim director on August 5th of '02; is  
[3] that right?  
[4] A: Yes.  
[5] Q: And that was Cheryl Smoker?  
[6] A: Yes.  
[7] Q: And then it also looks like they wanted  
[8] you to complete your ASAP job obligations during  
[9] that —  
[10] A: Yes.  
[11] Q: — were you okay working with interim  
[12] director and completing your past obligations?  
[13] A: I felt a little overwhelmed, but in order  
[14] for me to assume the position of executive  
[15] director I knew I had to fulfill what was written  
[16] down here. So I did, I agreed, knowing it wasn't  
[17] going to be easy.  
[18] Q: Well, what about the youth campout, when  
[19] was that?  
[20] A: That was August, I believe August — it  
[21] started I believe August 18th. I can't remember.  
[22] It was during that week that I was to assume the  
[23] executive director position.  
[24] Q: Your first week as executive director?  
[25] A: First week, and then — because right

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[1] after that weekend it was the Fort Missoula Pow  
[2] Wow.  
[3] Q: And I assume you wanted to see the youth  
[4] campout through anyway, if you had done all the  
[5] work on it?  
[6] A: Yes, yes.  
[7] Q: So you knew this was going to be a busy  
[8] time?  
[9] A: Yes, I did.  
[10] Q: But it must have been kind of exciting to  
[11] finish the youth campout that you already started  
[12] and assume your duties as executive director?  
[13] A: Yes.  
[14] Q: On August 16th you started working on  
[15] your own as executive director?  
[16] A: Yes.  
[17] Q: Where did Cheryl Smoker go? Was she  
[18] still working at the Indian Center?  
[19] A: No.  
[20] Q: And so she just wasn't there after the  
[21] 16th?  
[22] A: No.  
[23] Q: What do you mean by "no"?  
[24] A: She wasn't there.  
[25] Q: Okay. Had you been in this sort of

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[1] supervisory role before?  
[2] A: I was in a supervisory position at the  
[3] Salish Kootenai College for a year and a half as a  
[4] director, and I did supervise one counselor and  
[5] five instructors. And then I ran programs that we  
[6] had, it was over \$300,000 that I had to work with,  
[7] and it was the ABE — also included the ABE, GED  
[8] adult education program, and so yes, I did manage  
[9] for a year and a half.  
[10] Q: What's the ABE, what does that stand for?  
[11] A: Adult Basic Education.  
[12] Q: Okay. And so when you were the director  
[13] at the Salish Kootenai College, you were  
[14] overseeing one counselor and five instructors?  
[15] A: Yes.  
[16] Q: How did you oversee the instructors?  
[17] A: I was there as support, I had to make  
[18] sure that they had a classroom to teach, and, you  
[19] know, as a mediator if there were  
[20] misunderstandings, and to make sure that their  
[21] schedule coincided with what the — so it didn't  
[22] overlap with others in the same room, et cetera,  
[23] et cetera.  
[24] Q: So it sounds like that was more of a —  
[25] you were support staff for them, it's not like you

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[1] could hire and fire the instructors?  
[2] A: Oh, no, I could, and which I did.  
[3] Q: You could hire and fire instructors?  
[4] A: I hired two GED instructors, one for the  
[5] northern part of the reservation and one for the  
[6] southern, so I hired them, but no, I did not at  
[7] that time have to fire anybody.  
[8] Q: Okay. And of course this August 2nd  
[9] letter says that the position's probationary,  
[10] right?  
[11] A: Yes, it does.  
[12] Q: And you began working on August 16th,  
[13] assuming the position was probationary, right?  
[14] A: Yes.  
[15] Q: Did you ever tell anybody you objected to  
[16] a probationary period?  
[17] A: I did not do that because I wanted the  
[18] position, and due to the — I would say the  
[19] intimidation, the, you know, very — I did not  
[20] want to fight with the board. I did not want to  
[21] argue with them and tell them this is what it is,  
[22] because then I felt like I was telling them what  
[23] to do when all they had to do at that moment was  
[24] tell me, then, if you're not going to abide, then  
[25] you can take a walk or you can be terminated,

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(1) which I understood that as well. Especially  
(2) because I was supposed to have been on probation.  
(3) And they tried to be a very intimidating board. I  
(4) didn't hear good things about it, but again, I was  
(5) hoping with us being adults, with all of us being  
(6) adults and professionals that we could overcome  
(7) this. So no, I did not argue with them, I did not  
(8) want to argue with them. And I did not fully  
(9) understand that I did not have to be on a  
(10) probationary status until I started looking at the  
(11) policies more thoroughly.

(12) Q: And we'll get to the policies in a  
(13) minute. I guess let's kind of follow that line of  
(14) thought a little bit. When did you start looking  
(15) at policies —

(16) A: I started looking at them after Flo  
(17) Gardipee and I went through them and I started  
(18) thinking, you know, I looked at it, but I  
(19) didn't — I didn't go in that direction, I didn't  
(20) say anything. I just thought, okay, we're going  
(21) to get past this, I'm going to prove I can do it  
(22) and I would never have to bring it up.

(23) Q: So when you and Flo Gardipee met on  
(24) August 29th to go over policies, that's when you  
(25) started thinking maybe I shouldn't be on

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(1) probation?

(2) A: Yeah, but of course I did not say  
(3) anything. In fact, I didn't even give it a second  
(4) thought at that point because I thought we could  
(5) get beyond everything.

(6) Q: What are you trying to get beyond?

(7) A: Get beyond me proving that I could be the  
(8) director, and then maybe the intimidation would  
(9) subside, I thought maybe you could get into a  
(10) working relationship, working professional  
(11) relationship. And that's what I was hoping for.

(12) Q: Would you say the board was intimidating  
(13) on August 2nd?

(14) A: I would say that no, not on August 2nd.

(15) Q: You accepted the position knowing that it  
(16) was probationary, right?

(17) A: Believing that it was.

(18) Q: I mean, because that's what this August  
(19) 2nd letter says, correct?

(20) A: Right.

(21) Q: It says the terms of the position are —  
(22) it's probationary for 90 days?

(23) A: Because that's what I believed was in the  
(24) policy at that point.

(25) Q: Well, but that was the terms of the

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(1) position, right?

(2) A: Not according to policy and procedure.

(3) Q: But according to this letter?

(4) A: Because I believed it.

(5) Q: I'm not asking what you believed. My  
(6) question is this letter, dated August 2nd, 2002  
(7) stated that the terms of the position were that it  
(8) was going to be probationary for 90 days, right?

(9) A: Because, again, I would not have agreed  
(10) to it had I known for sure that I did not have to  
(11) be a probationary employee.

(12) Q: And I'm not asking if you agreed to it or  
(13) not, I'm just saying the terms of this letter say  
(14) that that position was probationary for 90 days,  
(15) right?

(16) A: That's right.

(17) MR. VAINIO: And I'd object, you know,  
(18) the content of this letter is not really relevant  
(19) but it's not bound — this doesn't establish what  
(20) the situation was. What establishes what the  
(21) situation was is the policies and rules of the  
(22) Indian Alliance, and also the law of the State of  
(23) Montana. So you can say anything in a letter but  
(24) it's not the law. It's not the policy.

(25) MR. MORRIS: And that will be the next

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(1) issue. But are you telling her not to answer that  
(2) question because you're saying it's irrelevant?

(3) MR. VAINIO: I'm just saying let's move  
(4) on and let's get to the policies and what they  
(5) say. I'm not instructing her not to answer, no,  
(6) but I'm interjecting an objection and moving this  
(7) thing along, let's get to the meat of the thing.

(8) Q: (By Mr. Morris) Well, to me, this is the  
(9) meat of the thing. Because what we have is a  
(10) letter that says the terms of the position are  
(11) probationary for 90 days and you knew that, right?

(12) A: Again, I knew it to be the truth when in  
(13) fact it wasn't.

(14) Q: Well, you believe it's not.

(15) A: I believe that what's in here is not  
(16) true.

(17) Q: Okay. But you accepted the position  
(18) under the belief that you were on probation?

(19) A: Yes.

(20) Q: In fact, you said a second ago that you  
(21) had to fulfill what this letter said for your  
(22) employment?

(23) A: Yes.

(24) Q: And part of what this letter says for  
(25) your employment is you're on probation?

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(1) Q: The orientation meeting I think was on  
(2) August 26th, right?  
(3) A: Yes.  
(4) Q: I mean, other than when you get this  
(5) letter in your mailbox, do you talk to any board  
(6) members about the position?  
(7) A: I don't remember. I don't think I did.  
(8) I might have asked if they were going to indeed  
(9) advertise for the position and if it would be soon  
(10) and I can't remember if I did ask, who I asked.  
(11) Q: What position are you talking about?  
(12) A: The executive director position.  
(13) Q: I'm talking about after you got the  
(14) letter on August 2nd.  
(15) A: Oh, okay.  
(16) Q: Did you talk to any board members about,  
(17) hey, you got a new job?  
(18) A: I don't remember.  
(19) Q: Okay.  
(20) A: Because I don't have — no, I don't  
(21) remember.  
(22) Q: Did you talk to Kitty Felix or Debbie  
(23) Tatsey about — now that you were the executive  
(24) director?  
(25) A: I just said yes, I accepted the position

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(1) and Debbie Tatsey did tell me, she says, I  
(2) don't — she says, well, good luck, I hope — what  
(3) she says was now you will have seven bosses.  
(4) Q: She said that again?  
(5) A: Yeah. And then she said — I think that  
(6) was about it. You know, Kitty said okay. But  
(7) they really didn't have any comments that I know  
(8) of, not to me.  
(9) Q: Those two?  
(10) A: Yes.  
(11) Q: Okay. And you don't remember talking to  
(12) the board prior to, say, like August 16th?  
(13) A: I don't remember.  
(14) Q: Did you have any concerns that you  
(15) wouldn't make it off probation?  
(16) A: No, I didn't.  
(17) Q: Any concerns that the Missoula Indian  
(18) Center would not extend a permanent position to  
(19) you?  
(20) A: No. Yes, I did. At the orientation  
(21) meeting on August 26 when they said the staff  
(22) evaluations were coming in, I knew that Kitty,  
(23) Debbie and Fritz and possibly Jocelyn would  
(24) discredit me, so yes, I did, I had some  
(25) misgivings.

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(1) Q: Prior to the orientation meeting on  
(2) August 26 did you have any concerns —  
(3) A: No, no, I didn't, not prior to that.  
(4) Q: The board ever mention that they wanted  
(5) to evaluate your performance as executive director  
(6) before extending a permanent position?  
(7) A: Yes, because I — will you repeat that?  
(8) Q: Sure. Did the board mention to you that  
(9) they wanted to evaluate your performance as the  
(10) executive director before extending a permanent  
(11) position?  
(12) A: Yes, they said every 30, 60 and 90 days.  
(13) And again, at that point they didn't tell me they  
(14) were going to use staff evaluations.  
(15) Q: Who said that to you?  
(16) A: I believe it was Luanne Kicking Woman.  
(17) Q: Do you remember when?  
(18) A: It was at the orientation meeting.  
(19) Q: Okay.  
(20) (Discussion held off the record.)  
(21) (Whereupon, the deposition was in recess  
(22) at 12:09 p.m., and subsequently reconvened at 1:12  
(23) p.m., and the following proceedings were had and  
(24) entered of record:)  
(25) Q: (By Mr. Morris) Where we left off, Ms.

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(1) Iron Shell, was with the August 2nd letter which  
(2) is labeled ER009 from Exhibit 2, and then from  
(3) there where I wanted to talk to you about, it  
(4) seems like the next major date would be August  
(5) 16th, which is when you began — you were the  
(6) executive director on your own?  
(7) A: Yes.  
(8) Q: And the interim director wasn't assisting  
(9) you anymore?  
(10) A: Right.  
(11) Q: And then from August 16th and then you  
(12) had your orientation on August 26th; is that  
(13) right?  
(14) A: Yes.  
(15) Q: And what was going on between the 16th  
(16) and the 26th?  
(17) A: It was the culture camp and more or less  
(18) just getting — well, just familiarizing myself  
(19) with what was in the office, and that was pretty  
(20) much it.  
(21) Q: Yeah, and the culture camp is the same as  
(22) the youth campout?  
(23) A: Yeah, it was a youth culture camp.  
(24) Q: Okay. And that day you said was like the  
(25) 18th?

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[1] Q: So you didn't agree that you should have  
[2] to report weekly?  
[3] A: But I didn't state that.  
[4] Q: And it sounds like you did do weekly  
[5] reports from that time forward, right?  
[6] A: Yes.  
[7] Q: And then I think there's also a sentence  
[8] about 30- and 60- and 90-day evaluations?  
[9] A: Yes.  
[10] Q: Is that also the sentence that says that  
[11] the staff will be evaluating —  
[12] A: I was also informed that the staff will  
[13] be evaluating me on my performance at the end of  
[14] 30, 60 and 90 days.  
[15] Q: Okay. And from what we talked about this  
[16] morning, it sounds like you didn't like that  
[17] provision?  
[18] A: No, not at all.  
[19] Q: Had you evaluated the previous executive  
[20] director?  
[21] A: No.  
[22] Q: So this was the first time you ever heard  
[23] of an executive director being evaluated by the  
[24] staff?  
[25] A: Yes.

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[1] Q: Did you mention anything to the four  
[2] board members there that you didn't like that?  
[3] A: No.  
[4] Q: Why not?  
[5] A: Because as I told you, I wanted to keep  
[6] my position and the board of directors had already  
[7] started exhibiting hostile looks, negative looks,  
[8] and a very negative attitude towards me, so I  
[9] accepted what — I didn't accept, I just didn't  
[10] say that I didn't like it. But I had already  
[11] accepted the position.  
[12] Q: There probably wasn't much you could do  
[13] about it anyway, right?  
[14] A: Right.  
[15] Q: How was these four women being hostile or  
[16] negative toward you?  
[17] A: Well, they would raise their voices at  
[18] me, sit there and give me dirty looks like I had  
[19] done something wrong when I hadn't done anything  
[20] at all, because I hadn't even assumed most of my  
[21] duties. They were very, very unfriendly.  
[22] Q: Are you saying that about all four of  
[23] them?  
[24] A: No, not all four of them. Luanne Kicking  
[25] Woman, Elaine Little Bird and Denise Grant. And I

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[1] didn't exhibit that from Flo Gardipee.  
[2] Q: But these are the same people who just  
[3] three weeks prior had hired you, right?  
[4] A: Right.  
[5] Q: So what had happened in the previous  
[6] three weeks to make them now hostile?  
[7] A: That, I don't know. I don't know.  
[8] Q: So how did your first month go as  
[9] executive director?  
[10] A: It went very badly.  
[11] Q: Why is that?  
[12] A: First of all, I had no — I felt like my  
[13] authority was — well, I saw that I had no  
[14] authority, because when I would give — I had to  
[15] start doing memos in order for the staff to  
[16] perform what I wanted, what I expected them to do.  
[17] Like, for instance, I implemented a new policy,  
[18] not policy, but a new — okay. For lunchtime,  
[19] there was no one to cover the front desk, it was  
[20] always the secretary. So I had each program, the  
[21] CD, the ASAP, and the administrative assistant  
[22] take Monday — they had to choose what day they  
[23] would sit at the front desk for an hour, and then  
[24] take their lunch at a later time, so the secretary  
[25] could have a chance to go do her lunch.

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[1] They didn't like that. I sent out a  
[2] memo. There were simple things that I expected  
[3] them to do that were already going on at the  
[4] Center, and it was like I didn't even exist. And  
[5] so they would not follow my directive. Like for  
[6] instance — and like I said, these are small  
[7] things but they are important things.  
[8] I wanted to have — we always had a  
[9] luncheon at least once a week or once every two  
[10] weeks, and I would say, okay, it was for us to get  
[11] together as employees, fellow employees. And when  
[12] I said, Okay, we're going to have a luncheon on  
[13] this date and this date, it had been happening up  
[14] until the time I became executive director, and  
[15] everyone went off on their own and I saw that they  
[16] didn't have to follow my directive. And I  
[17] wondered about that at that time. But then later  
[18] on when I found out that they were going directly  
[19] to the board, I had no authority. They could and  
[20] did do whatever they wanted.  
[21] Q: So it sounds like the staff was not  
[22] respecting your authority as an executive  
[23] director?  
[24] A: They didn't have to, the board didn't  
[25] respect it.

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[1] A: These were scribbly notes that I had  
[2] written down. And yes, I did write this right  
[3] after the meeting. But I did not present this to  
[4] the board because they did not give me back my  
[5] position. So I thought, well, I tried to keep  
[6] things on a positive note, they had already known  
[7] about this. So I did not present this to them.  
[8] But this is what is on the table.

[9] Q: And so if I understood you correctly,  
[10] Exhibit 4, you never presented this to the board  
[11] of directors, these are just your notes?

[12] A: These are my notes.

[13] Q: Okay. And on the tape I note that you  
[14] say you'll live with either decision that the  
[15] board of directors live with, or decide; is that  
[16] correct?

[17] A: Yes.

[18] Q: Your September 16th letter says that you  
[19] reserve the right to add an addendum to this  
[20] request on or before September 30th, 2002; is that  
[21] right?

[22] A: Yes.

[23] Q: Did you ever add an addendum?

[24] A: I added an addendum because after I  
[25] realized that I was not going to be given my other

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[1] position I did add an addendum and the board of  
[2] directors did say they would support me in  
[3] whatever duties and decisions I had to make as  
[4] executive director, and that was the addendum that  
[5] I had written down that should be in their  
[6] possession. I don't have a copy of that.

[7] Q: I haven't seen a copy of that addendum,  
[8] but you're sure that what it said was — I guess  
[9] tell me again what the addendum said.

[10] A: What it says was that the addendum — if  
[11] I can remember. No, I don't have that. It said  
[12] that the board of directors — I recapped what the  
[13] board of directors said to me, that they would  
[14] support me in my decisions and my duties that I  
[15] perform as executive director. That was pretty  
[16] much the addendum that I had given.

[17] Q: So you gave them a statement saying the  
[18] board of directors will support you?

[19] A: Said they would support me.

[20] Q: So you gave the board of directors a  
[21] statement that said that the board of directors  
[22] said they would support you?

[23] A: Right.

[24] Q: And I assume you did that after the  
[25] September 24th board of directors' meeting?

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[1] A: Meeting, yes.

[2] Q: And going to Exhibit 4 in your notes from  
[3] the September 24th meeting, you talk first about  
[4] rumors and gossip?

[5] A: Yes.

[6] Q: And one of the rumors you say, again, was  
[7] one board member stated we will be hiring a new  
[8] director in 90 days?

[9] A: Yes.

[10] Q: And actually that's what one person said  
[11] a board member said, right?

[12] A: Yes.

[13] Q: You never actually heard a board member  
[14] say that?

[15] A: No.

[16] Q: And then you say when the staff were  
[17] informed that they will be doing an evaluation on  
[18] the ED, a staff member, Kitty Felix said, now I  
[19] can get back at her; is that right?

[20] A: Yes.

[21] Q: Did you hear Ms. Felix say that?

[22] A: I did not hear her say that.

[23] Q: Who said it?

[24] A: It was — you know, it was a community  
[25] member but she also works there. It was Jocelyn

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[1] Little Boy.

[2] Q: So Jocelyn Little Boy told that you Kitty  
[3] Felix said that now Kitty can get back at you?

[4] A: Right.

[5] Q: And then you say I was also informed by a  
[6] previous recent staff member that Kitty also said  
[7] they get rid of somebody at the MIC if they don't  
[8] like them?

[9] A: Yes.

[10] Q: Who said that?

[11] A: Tina Snell.

[12] Q: But you never heard Ms. Felix say that?

[13] A: No.

[14] Q: And the connotation that you took from  
[15] this quote that you have there is that the health  
[16] department gets rid of someone at the MIC if the  
[17] health department doesn't like them; is that  
[18] right?

[19] A: Where is this at?

[20] Q: I'm at the last sentence of your  
[21] paragraph numbered one.

[22] A: Yes, yes, Tina Snell said that as well.

[23] Q: Tina Snell said that?

[24] A: Yes.

[25] Q: But I'm trying to figure out who you mean

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[1] Tatsey and I wanted to get off probation so that I  
[2] would feel a little more secure and then start  
[3] asking questions, as I mentioned before.  
[4] Q: And then I think the last time you  
[5] brought that up I said, So you acted different  
[6] when you were on probation versus how you think  
[7] you would have acted if you weren't?  
[8] A: And I responded that I would ask more  
[9] questions —  
[10] Q: And it sounds like you would also have  
[11] reprimanded staff?  
[12] A: I did reprimand them before. I  
[13] reprimanded Debbie because I had the time to do  
[14] it. It was October and like I said, things were  
[15] happening also, I was traveling, I had to take  
[16] time off to go to a funeral. And I was trying to  
[17] perform my duties. I was performing my duties,  
[18] but I was also given added things to do, things  
[19] were happening from day to day. There was a gas  
[20] leak. I had to send everybody home for one day,  
[21] so on and on and on. So yes, I did not have time.  
[22] I forgot what your question was.  
[23] Q: Well, one of the reasons you said you  
[24] didn't want to do it is because these people were  
[25] friends with members of the board and you wanted

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[1] to wait until you were off probation and felt more  
[2] secure?  
[3] A: Ask more questions, and I did feel a  
[4] little more secure, yes.  
[5] Q: And you must have expected that these  
[6] staff members that were unfriendly with you were  
[7] going to give you bad evaluations?  
[8] A: Oh, yes.  
[9] Q: So regardless of whether or not you  
[10] reprimanded them, you were going to get a bad  
[11] evaluation?  
[12] A: Yes, yes.  
[13] Q: So that's what I don't understand why  
[14] you're all that worried about retaliation, you  
[15] know they are going to give you bad evaluations  
[16] regardless?  
[17] A: So what was your question?  
[18] Q: Why are you worried about retaliation if  
[19] you know they are going to give you bad  
[20] evaluations regardless?  
[21] A: Because it was only half of the staff.  
[22] The other half — it was a 50/50, I thought.  
[23] Q: So you wanted to reprimand the other half  
[24] of the staff as well?  
[25] A: I would have if I had to.

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[1] Q: Did you have any reason to in your first  
[2] 30 days?  
[3] A: Not in my first 30 days, no. And my last  
[4] few days I did reprimand one more, Jim Dempsey,  
[5] due to Indian Health Service didn't have the  
[6] information that they required for giving us the  
[7] money. It was called C-D-M-I-S. And I did not —  
[8] so I did tell him he had to get that information.  
[9] Q: Did you put him on written reprimand  
[10] then?  
[11] A: Yes.  
[12] Q: Let's go then to your reprimand of Debbie  
[13] Tatsey. It sounds like that was because Aaron  
[14] Felix was driving the van, right?  
[15] A: That's what started it. It wasn't —  
[16] that was not the reason. The reason is because  
[17] Debbie, to me, was undermining my authority and  
[18] not respecting me as executive director and coming  
[19] in and shaking her finger at me and yelling at me  
[20] and telling me what I could and couldn't do.  
[21] Q: Who asked Mr. Felix to drive the van?  
[22] A: I believe it was Kitty Felix.  
[23] Q: You didn't have anything to do with that?  
[24] A: No.  
[25] Q: Do you know how far he drove it?

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[1] A: Yes, he drove it from the Missoula Indian  
[2] Center office to the — I believe to the  
[3] campgrounds, which is in Fort Missoula.  
[4] Q: And how do you believe that, what's your  
[5] basis for that?  
[6] A: Because Jocelyn said.  
[7] Q: Did you do any investigation other than  
[8] Ms. Little Boy's statement?  
[9] A: No, I didn't.  
[10] Q: And then finishing this paragraph from  
[11] your September 24th notes, it says that you're  
[12] worried about the retaliation, as well as not  
[13] having policies in place for their use of illegal  
[14] drugs and some micromanaging by certain board  
[15] members. It seems, and we've talked about this,  
[16] the board said go ahead and start a policy for  
[17] drug testing; is that right?  
[18] A: Yes. They said to go ahead and reprimand  
[19] the staff.  
[20] Q: All of them?  
[21] A: Whoever needed it. I'm assuming if it  
[22] was all of them.  
[23] Q: So they said you have the authority to  
[24] reprimand the staff?  
[25] A: Yes, they did.

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[1] Q: And did they say why they thought you  
[2] should work on that?

[3] A: No.

[4] Q: Did you know why you needed to work on  
[5] that?

[6] A: I didn't know why but I believed it was  
[7] because for the last couple years, I believe maybe  
[8] two or three years before that, the morale was  
[9] already low. They were going through — and  
[10] probably even before that. They were going  
[11] through many directors, turnover and also new  
[12] board members, which is what happens. And so they  
[13] were — now that's just what I believe. And so it  
[14] was going to take a long time, more than 30, 60 or  
[15] 90 days for this to actually get done, but I could  
[16] initiate it and get it started.

[17] Q: Well, and I got to think employee morale  
[18] was pretty low?

[19] A: It was very low. It was very low before  
[20] I ever took the position.

[21] Q: I got to think conflict resolution was  
[22] all sorts of problems as well. I mean, you have  
[23] half the staff that are unfriendly to you and the  
[24] other half that may be friendly to you?

[25] A: Yes. There was also conflict amongst

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[1] themselves, not just with me. I'm just addressing  
[2] what I observed or was on the receiving end, but I  
[3] also have been aware of other things going on  
[4] within the realm within the staff.

[5] Q: And the board mentioned to you that they  
[6] were concerned about poor communication with the  
[7] staff; do you remember that?

[8] A: Well, that's what it says. They didn't  
[9] actually say that, but I'm sure that's what it was  
[10] because it's written down.

[11] Q: I'm talking about the September 25th  
[12] meeting. Did they mention to you that they were  
[13] worried about communication between you and the  
[14] staff?

[15] A: I don't remember.

[16] Q: And the board — do you remember the  
[17] board expressing concern over your leadership  
[18] style?

[19] A: I don't remember that either, but I did  
[20] let them know that I was working on getting more  
[21] training.

[22] Q: What training were you working on?

[23] A: I brought someone in from Helena to give  
[24] me supervisory education and that did happen.

[25] Q: At the September 25th evaluation at one

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[1] point you say I expected a terrible evaluation. I  
[2] have to be honest with you, I didn't expect to be  
[3] here at 30 days because of what is going on with  
[4] the staff here and it's been personalized. Do you  
[5] remember saying that?

[6] A: Yes.

[7] Q: Why did you expect a terrible evaluation?

[8] A: Because I didn't get along with Kitty  
[9] Felix, Debbie Tatsey, Fritz Reddies, Kathryn  
[10] Reddies, Jocelyn Little Boy and Peggy Cochran.

[11] Q: So why didn't you expect to be there  
[12] after 30 days?

[13] A: Because I expected the board to tell me  
[14] that due to these evaluations we don't feel that  
[15] you are fit for this position.

[16] Q: A good portion of this transcript is  
[17] devoted to rumors and gossip; what rumors and  
[18] gossip are we talking about?

[19] A: That they are going to replace me in 90  
[20] days.

[21] Q: That's the only rumors and gossip?

[22] A: No, that's not the only rumor and gossip.

[23] Q: What else?

[24] A: It was — Kitty and Debbie also were  
[25] talking about — I was supposed to have done a few

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[1] things that — like for instance, I was supposed  
[2] to have been swearing, which in fact I will admit  
[3] I did say a few swear words as a staff  
[4] coordinator. As an executive director I took a  
[5] step up and at one point I was joking around with  
[6] them, which I probably shouldn't have been, and I  
[7] did say one bad word, and that was all in fun, in  
[8] play, we were all joking around. That was the  
[9] only time I had ever said anything. It wasn't  
[10] derogatory. It wasn't blatant, and so the rumor I  
[11] heard was that she doesn't know how to be the  
[12] director because she's out there cussing. And I  
[13] said no, I was not cussing. So that was one  
[14] rumor.

[15] Another rumor was I was supposed to have  
[16] been trying to hustle one of the employee's  
[17] husbands. When that employee did come to me and  
[18] started telling me illicit things that went on  
[19] with her and her husband, which I didn't need to  
[20] hear, and so that's where that came from. I did  
[21] not initiate that. This — Kitty initiated that.  
[22] She went in and said, Esther, my husband will not  
[23] F me because — and I was baffled. I said, you  
[24] know, why are you telling me this, and on and on  
[25] and on. She kept saying something about, oh, this



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[1] A: Well, it was just never brought up again.  
[2] Q: You went?  
[3] A: I went.  
[4] Q: Did anybody else go?  
[5] A: No.  
[6] Q: Okay. So it sounds like it worked itself  
[7] out?  
[8] A: Yes.  
[9] Q: And then after the September 25th meeting  
[10] you drafted an acceptance letter for the position  
[11] as well as a resignation letter for your old  
[12] position, right?  
[13] A: Yes.  
[14] Q: Why did you write these letters?  
[15] A: Because I was directed to do so. At the  
[16] September 25th — see, they — we met for them to  
[17] go over my 30-day evaluation. And at that point  
[18] Dion KILLSBACK, I remember this, said we would  
[19] like a letter from you stating that you have  
[20] accepted the director position and did resign from  
[21] the ASAP position. So I did do that. But I dated  
[22] it the same day, I believe it was September 26th.  
[23] Q: Had anybody asked you to get these  
[24] letters together before September 25th?  
[25] A: No.

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[1] Q: Were you okay getting the letters  
[2] together? Did that bother you at all?  
[3] A: Well, I wondered why I had to do it later  
[4] and no — yes, and no. Yes, it bothered me that  
[5] they asked me at a later date, and no because I  
[6] knew that that's what I had to do.  
[7] Q: Why did you think you had to do it?  
[8] A: Because they told me to. I have to  
[9] follow the directive of the board  
[10] EXHIBITS:  
[11] (Deposition Exhibit Nos. 6-7 marked for  
[12] identification.)  
[13] Q: (By Mr. Morris) Ms. Iron Shell, I've  
[14] given you what's been marked as Exhibit 6 and 7.  
[15] Exhibit 6 looks like your resignation letter?  
[16] A: Yes.  
[17] Q: And Exhibit 7 is your letter of  
[18] acceptance?  
[19] A: Yes.  
[20] Q: And I note you say the starting date for  
[21] your executive director position is August 16th,  
[22] which is the date from that August 2nd letter that  
[23] you would start working on your own?  
[24] A: Yes.  
[25] Q: Did you think these were appropriate to

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[1] send?  
[2] A: Appropriate because they did need these  
[3] on paper, but inappropriate because the dates  
[4] didn't match.  
[5] Q: Didn't match what?  
[6] A: They didn't match the August 16th — my  
[7] position started a month before that. But yes,  
[8] appropriate because this is what is required.  
[9] Q: And of course you sent these after you  
[10] did your request to be reinstated in your previous  
[11] position?  
[12] A: Yes.  
[13] Q: And if I understood you earlier, it looks  
[14] like you'd already hired then for your old  
[15] position?  
[16] A: No, it was later.  
[17] Q: It was after September 26?  
[18] A: Yes.  
[19] Q: Would you agree with me at least as of  
[20] September 26 it doesn't look like there's any  
[21] going back to your old spot?  
[22] A: Right, yes.  
[23] Q: Going back to that August 2nd letter, and  
[24] if I put your acceptance letter together with the  
[25] letter from August 2nd it looks like you're

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[1] accepting the position following the August 2nd  
[2] letter?  
[3] A: Yes.  
[4] Q: And from your testimony this morning you  
[5] said one of the problems was that you didn't  
[6] think — no, you now believe that it was improper  
[7] to put you on probation, right?  
[8] A: Yes.  
[9] Q: And why is that?  
[10] A: Because in the policies and procedures  
[11] I'm not a new employee.  
[12] Q: Though you applied for a position, a new  
[13] position?  
[14] A: With the same organization.  
[15] Q: But you applied for a new position?  
[16] A: Yes.  
[17] Q: And were accepting that new position?  
[18] A: Yes.  
[19] Q: And so your only issue was that you had  
[20] worked there before you accepted the new position?  
[21] A: Yes.  
[22] Q: And since you worked there before you  
[23] accepted the new position, you don't believe the  
[24] employer can put you on probation?  
[25] A: Yes, according to policies and

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[1] Q: And then the page 6 is that section D  
[2] where it starts new agency employees?  
[3] A: Yes.  
[4] Q: In fact, it looks like the Missoula  
[5] Indian Center was treating you as a new employee,  
[6] right?  
[7] A: Yes.  
[8] Q: You got an orientation period, I think  
[9] they even made you sign the code of ethics again?  
[10] A: Yes.  
[11] Q: Of course you had the 90-day probation  
[12] and you had a 30- and 60-day evaluation?  
[13] A: Yes.  
[14] Q: And the August 2nd letter doesn't say  
[15] that you're a new employee, does it, it just says  
[16] here's — we're going to offer you the job, 90-day  
[17] probation, and here's the criteria that we want  
[18] you to support and follow?  
[19] A: Yes.  
[20] Q: And after receiving this August 2nd  
[21] letter you accepted the position as the executive  
[22] director?  
[23] A: Yes.  
[24] Q: How did the next 30 days go after your  
[25] 30-day evaluation? Let's bring you up to 60 days.

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[1] A: Okay. It wasn't. That's when I did not  
[2] get — the staff would not honor my directives,  
[3] they again did whatever they wanted. They would  
[4] come and go as they pleased. And again, I said  
[5] there needs to be somebody in the health  
[6] department because, you know, I'm in my office and  
[7] if someone comes in, they need to have — we need  
[8] to have a staff member there, as well as with the  
[9] CD department, and they would leave, the health  
[10] department would leave.  
[11] Q: What about the CD department, were they  
[12] leaving?  
[13] A: They were pretty good. The CD department  
[14] was pretty good, they were there.  
[15] Q: But still, these five people you're  
[16] having a problem with?  
[17] A: Actually the three.  
[18] Q: The three mainly?  
[19] A: The two, mainly Jocelyn and Peggy were  
[20] kind of on the sidelines, so to speak.  
[21] Q: And so you said the first 30 days went  
[22] very badly, how would you assess the next 30 days?  
[23] A: They were worse.  
[24] Q: How worse?  
[25] A: They again, like I told you, they

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[1] wouldn't honor my directives, that's when Debbie  
[2] Tatsey came in and literally threatened me.  
[3] Q: Is that the shaking finger?  
[4] A: The shaking the finger, and you know, so  
[5] that was really bad.  
[6] Q: And it sounds like you're sending out  
[7] memos, and it sounds like the staff is making fun  
[8] of you for sending out memos?  
[9] A: Oh, yes.  
[10] Q: So once again, they're not respecting  
[11] your authority as the executive director?  
[12] A: Yes.  
[13] Q: And were you trying to talk to them about  
[14] Hey, you got to listen to me, I'm the executive  
[15] director?  
[16] A: I didn't want to push my authority  
[17] around, they already knew their jobs. I expected  
[18] them to continue, which they did, but it was like  
[19] as if I wasn't even there.  
[20] Q: So they're still minding their jobs but  
[21] they're pretending like — they're ignoring  
[22] anything you might say or do?  
[23] A: Right.  
[24] Q: That ought to be pretty frustrating.  
[25] A: Yes.

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[1] Q: What did you try to do to remedy that?  
[2] A: I would have staff meetings. I  
[3] encouraged them to come in and talk to me.  
[4] Q: How did the staff meetings go?  
[5] A: The staff meetings we addressed a lot of  
[6] Missoula Indian Center business. Those went quite  
[7] well. Although they knew we had staff meetings at  
[8] a certain point, like 9:00 o'clock in the morning,  
[9] and I had to run around and gather everybody and  
[10] tell them, look, we're having a staff meeting.  
[11] They would not comply. When I saw they did with  
[12] the former director, they would be there at 9:00  
[13] o'clock. And so, again, they were undermining my  
[14] authority, or not respecting it, me as director.  
[15] Q: So when you would have these staff  
[16] meetings would you have the five that were  
[17] supportive of you show up on time and the other  
[18] five show up later?  
[19] A: Yes, in fact, they did come in on time.  
[20] (Discussion held off the record.)  
[21] Q: (By Mr. Morris) Ms. Iron Shell, we're  
[22] talking about your second 30 days, so basically up  
[23] to the 60-day evaluation; did you have another  
[24] meeting with the board?  
[25] A: Oh, yes, we had monthly meetings. The

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(1) regularly scheduled board meetings.  
(2) Q: Okay. How did the monthly board meetings  
(3) go?  
(4) A: I felt there was a lot of animosity.  
(5) Like — let me take a look at my paper. A lot of  
(6) animosity toward me especially, and since — and  
(7) then one board member in particular, Elaine Little  
(8) Bird, was, you know, literally, I won't say  
(9) reprimanded, but she did raise her voice to Peggy  
(10) and Jim at one point. And I said why didn't you  
(11) help with the Pow Wow, you know, I had no input  
(12) from you. And I felt that was being  
(13) disrespectful.  
(14) And another time Denise Grant, I heard  
(15) her holler at Flo, raise her voice, literally  
(16) holler at her, and those — and then I didn't —  
(17) there were always really — we weren't there very  
(18) long, it was like maybe an hour with the staff,  
(19) the director and the board. Then the staff were  
(20) asked to leave and I would meet with the board  
(21) briefly and then they would go into executive  
(22) session.  
(23) So I never really felt good at those  
(24) meetings. Because I just felt like no one was  
(25) listening to me, you know, when I was saying,

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(1) okay, I need to do this and this, and what's going  
(2) on, it was like, okay, yeah, that's what we'll do,  
(3) or that's what will happen, but I didn't feel like  
(4) I had enough time to prove whether I could or  
(5) couldn't do it. And so I never really felt  
(6) comfortable at those meetings.  
(7) Q: Did you have a 60-day evaluation meeting  
(8) with the board?  
(9) A: I had a 60-day evaluation meeting on  
(10) November 11th, which should have been performed on  
(11) October 26th, October 16th, excuse me. And then I  
(12) should have had the orientation meeting on October  
(13) 26th when in fact I did not have the meeting until  
(14) November 11th.  
(15) Q: Okay. You don't mean the orientation  
(16) meeting, you mean the 60-day?  
(17) A: 60-day evaluation.  
(18) Q: And it looks like you got a 60-day  
(19) evaluation letter, right?  
(20) A: Yes.  
(21) EXHIBITS:  
(22) (Deposition Exhibit No. 9 marked for  
(23) identification.)  
(24) Q: (By Mr. Morris) Ms. Iron Shell, I'm  
(25) looking at Exhibit 9; is this the 60-day

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(1) evaluation letter you got?  
(2) A: Yes.  
(3) Q: And you signed at the bottom November  
(4) 11th, '02?  
(5) A: Yes.  
(6) Q: And I assume that's the day you received  
(7) it?  
(8) A: Yes. And the day that the meeting was  
(9) actually held, the evaluation meeting.  
(10) Q: What did the board say about how the  
(11) previous 30 days had gone?  
(12) A: They said that it was a recap of what —  
(13) I still needed to concentrate on the areas of  
(14) weakness as in my 30-day evaluation.  
(15) Q: Okay. So did they say those areas had  
(16) improved at all?  
(17) A: I don't remember, although I do remember  
(18) telling them that I felt they were. I was working  
(19) to have team buildup, I was working on my grant, I  
(20) was working on my weekly report to the board. I  
(21) was also working at the financial statement, I  
(22) really didn't have much time.  
(23) Q: To do what?  
(24) A: To do any of the duties. So I did as  
(25) much as I could for each. But also attempted to

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(1) get a lot of the reports in. And in fact, which  
(2) some were late that I had to submit to Indian  
(3) Health Service, so I called Indian Health Service  
(4) and said, I need some more time, and they  
(5) understood and they said, Okay, you have got an  
(6) extension, get things in at a certain time. I  
(7) can't remember exactly what they are.  
(8) Q: But some reports for Indian Health  
(9) Service?  
(10) A: Yeah, reports that are submitted at  
(11) quarterly.  
(12) Q: Okay. But you got an extension on those?  
(13) A: Yes.  
(14) Q: What was the grant that you were working  
(15) on?  
(16) A: I was working on — I was going to do a  
(17) Pow Wow, we had no money for that, at Fort  
(18) Missoula that following maybe May, and I had it  
(19) completed and ready to turn in. I told them I  
(20) would have that on November 14th. I told Luanne  
(21) and Elaine that I would have it.  
(22) Q: That you would have the application  
(23) completed and turned in?  
(24) A: I had everything ready. It wasn't due,  
(25) actually due in to the program at that time, but I

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[1] would have it done for the board of directors.  
[2] Q: And the Pow Wow was to put on a grant, or  
[3] sorry, put — a grant was to put on a Pow Wow?  
[4] A: Yes.  
[5] Q: But the grant wouldn't have brought money  
[6] in to the Missoula Indian Center?  
[7] A: Well, it would have brought it in in the  
[8] sense that it would go under the umbrella of the  
[9] stipulation that they would hold the Pow Wow under  
[10] the auspices of the Missoula Indian Center. So  
[11] yes, it did bring money in, but it had to be spent  
[12] on a Pow Wow. That's what I said I would do with  
[13] it.  
[14] Q: Okay. And then if the Pow Wow made  
[15] money, the Missoula Indian Center would —  
[16] A: They would regenerate that for the next  
[17] year's Pow Wow.  
[18] Q: Oh.  
[19] A: That would go back into the same account  
[20] and then they would start building up to have the  
[21] Pow Wow the following year.  
[22] Q: Okay. So it wouldn't increase the  
[23] operating budget at the Missoula Indian Center or  
[24] replace anything on the operating budget?  
[25] A: It would not replace anything, but it

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[1] would increase it because it added another  
[2] activity —  
[3] Q: Right.  
[4] A: — for prevention.  
[5] Q: That's a better way to put it. It  
[6] wouldn't impact any existing programs?  
[7] A: It wouldn't what?  
[8] Q: Impact any existing programs?  
[9] A: Oh, no, no.  
[10] Q: Whatever happened with that grant?  
[11] A: Well, when I was going to turn it in on  
[12] November 14th I was terminated from the position,  
[13] so I didn't turn it in.  
[14] Q: Have you ever turned it in?  
[15] A: No. Not for Missoula Indian Center.  
[16] Q: Have you done it for somebody else?  
[17] A: No.  
[18] Q: So did you ever turn in a grant for a Pow  
[19] Wow?  
[20] A: No.  
[21] Q: Did anybody just tell you that that grant  
[22] was sufficient to meet your hire letter?  
[23] A: Well, I believe that according to the  
[24] letter of offer that any grant would be accepted.  
[25] It didn't say whether the grant was approved or

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[1] not.  
[2] Q: No, it just said, Seek out and submit one  
[3] major grant proposal, right?  
[4] A: Yeah, so that covered a lot. And I  
[5] decided on the Pow Wow.  
[6] Q: Did anybody tell you that the Pow Wow  
[7] grant that you were putting together met the  
[8] criteria from the August 2nd letter?  
[9] A: No.  
[10] Q: Did anybody tell you that it did not meet  
[11] the —  
[12] A: No.  
[13] Q: Let me go ahead and finish the question.  
[14] Did anybody tell you that it did not meet the  
[15] criteria from the August 2nd letter?  
[16] A: No.  
[17] Q: So you think that your areas of weakness  
[18] had improved from the 30-day letter to the 60-day  
[19] letter?  
[20] A: Yes, I do, because I worked hard on doing  
[21] a personal approach to work as when Debbie Tatsey  
[22] and I had our falling out, so to speak, and I  
[23] reprimanded her. We got together and we decided  
[24] to put it all behind us, and I accepted that and  
[25] we did — I called her in for a meeting, she is

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[1] the head department for the health — she's  
[2] department head for the health. And so I worked  
[3] with her and Jim Dempsey, because he was head of  
[4] the CD program, with all the other programs under  
[5] them and we — I felt we were going in a positive  
[6] direction.  
[7] Q: Though you'd say in general the 30 to 60  
[8] days was worse than the first 30 days?  
[9] A: In that respect when working with  
[10] Missoula Indian Center business, yes. As far as  
[11] the snide remarks and memo queen, things like  
[12] that, I mean, it was a constant. It was an  
[13] everyday thing. You know, where is the memo queen  
[14] now.  
[15] I overheard Kitty Felix saying that when she was  
[16] in — not knowing I was still in my office. So  
[17] in some respects it did. Although I still  
[18] had — there was still work to be done. But  
[19] as far as the hostile work environment, it  
[20] remained.  
[21] Q: And then eventually, of course, you got  
[22] a letter saying that the board of directors was  
[23] not going to offer you a permanent position,  
[24] right?  
[25] A: Right.

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[1] Q: When did you receive that?  
[2] A: I received that on November 15th.  
[3] Q: Okay.  
[4] EXHIBITS:  
[5] (Deposition Exhibit No. 10 marked for  
[6] identification.)  
[7] Q: (By Mr. Morris) Ms. Iron Shell, take a  
[8] look at what we marked as Exhibit 10.  
[9] A: Okay.  
[10] Q: Is that the letter that you received  
[11] saying that you were not going to get the  
[12] permanent position?  
[13] A: Yes.  
[14] Q: And you say you received this on November  
[15] 15th?  
[16] A: Yes.  
[17] Q: Of I assume 2002?  
[18] A: Yes.  
[19] Q: And how did you receive this letter?  
[20] A: Through the mail.  
[21] Q: At home?  
[22] A: Yes.  
[23] Q: Okay. Had you previously left the  
[24] Center?  
[25] A: I went through — I left the day before.

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[1] Q: On the 14th?  
[2] A: Yes.  
[3] Q: Why was that?  
[4] A: Because Dion KILLSBACK came in to tell me  
[5] I had not received — or they were not going to  
[6] offer me the position, so I left. I says, you  
[7] know, why have a meeting. I mean, I already know  
[8] what's happening, so I left.  
[9] Q: How did you know if Mr. KILLSBACK was  
[10] right?  
[11] A: Because when the board of directors  
[12] attempted to terminate me on September 24th at  
[13] their meeting, which was not — which they didn't,  
[14] and I called one of the board members, Angela  
[15] White Crane, that afternoon, and I said, Angela, I  
[16] got a call from Luanne Kicking Woman and she wants  
[17] to come in and talk to me about my probationary  
[18] period and my position. I said, Is there anything  
[19] that you can tell me that I should be prepared  
[20] for? Should I get anything? Do I need anything?  
[21] And she said, No, not that I know of, and I said,  
[22] Well, then let me ask you this, I said, I do  
[23] believe that they are going to follow through with  
[24] their original plan. I said, Can you comment on  
[25] that, and she said no. So that's when I decided

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[1] that that's what they were coming in to do.  
[2] Q: And when did you call Angela?  
[3] A: I called her when — it must have been  
[4] maybe 10:00 o'clock in the morning.  
[5] Q: What day?  
[6] A: November 14th.  
[7] Q: Okay. And so since she wouldn't tell you  
[8] board business, you thought, well, they're going  
[9] to terminate me so I better leave?  
[10] A: No, I waited for Dion so I could give him  
[11] my keys.  
[12] Q: How did you know he was coming?  
[13] A: I didn't. I just saw him out in the  
[14] reception area.  
[15] Q: So you saw him and said what to him?  
[16] A: I called him into the office, I says, Oh,  
[17] you're here, I says, Come on in. I says, Look,  
[18] Dion, you don't have to tell me what's going on, I  
[19] figured it out. I said, Here are the keys, and he  
[20] looked at me and he said, I apologize, and I said,  
[21] okay, whatever.  
[22] Q: Did you guys say anything else?  
[23] A: Not that I remember.  
[24] Q: Do you have any notes that talk about  
[25] that?

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[1] A: No.  
[2] Q: So then he took your keys and what  
[3] happened next?  
[4] A: And I left. And that was in the  
[5] afternoon.  
[6] Q: So that was — you called Angela White  
[7] Crane that morning?  
[8] A: Yes, I was completing some business, I  
[9] can't remember what it was, and then I was  
[10] preparing to move my stuff out of this drawer that  
[11] I had a bunch of food in, so I took those. And  
[12] then I just performed — I was actually finishing  
[13] the grant budget part, so I finished that just to  
[14] finish it. And then I just waited. So I stayed  
[15] in the office. Then I did go to — I went to a —  
[16] it was a meeting, I think it was with Missoula  
[17] Youth Homes, although I can't remember exactly.  
[18] And then I went back to the Center. I was gone  
[19] for maybe an hour.  
[20] Q: Okay. So you called Ms. White Crane in  
[21] the morning, weren't very happy with her response  
[22] where she said — where she won't tell you what's  
[23] going on, so you cleaned out your desk, put the  
[24] stuff, I assume, in your vehicle?  
[25] A: No, I had it in a bag.

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[1] Q: Had it in a bag?  
[2] A: Yeah.  
[3] Q: Went to a meeting with Missoula Youth  
[4] Homes?  
[5] A: Yes.  
[6] Q: Who's the director of that?  
[7] A: I don't remember who's the director of  
[8] Missoula Youth Homes.  
[9] Q: Neither do I, but I know him. Burnbaum;  
[10] is that it?  
[11] A: I don't know.  
[12] Q: Okay. Had a meeting with Missoula Youth  
[13] Homes and then went back to the office, hung  
[14] around for a little while, saw Mr. Killback?  
[15] A: Yes.  
[16] Q: Gave him the keys, you said, Hey, I know  
[17] what's going on, he said, I'm sorry, or, I  
[18] apologize?  
[19] A: Right.  
[20] Q: Took the keys and you walked out?  
[21] A: Yes.  
[22] Q: And I assume after that you have not been  
[23] back to the Missoula Indian Center?  
[24] A: No, I haven't.  
[25] Q: And I assume you have not applied for any

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[1] other positions at the Missoula Indian Center?  
[2] A: No.  
[3] Q: Other than the letter we have marked as  
[4] Exhibit 10, were you ever told any reasons why you  
[5] were — why you were not offered a permanent  
[6] position?  
[7] A: No.  
[8] Q: So was this much of a surprise that you  
[9] weren't offered the permanent position?  
[10] A: No.  
[11] Q: Why is that?  
[12] A: Because the first 90 days indicated by,  
[13] again, rumors and gossip, the attitude, you know,  
[14] like I went to meetings with Luanne Kicking Woman  
[15] and Denise Grant, and they wouldn't even talk to  
[16] me. I am the director and they wouldn't give me  
[17] the courtesy of even at least identifying that or  
[18] saying Hi. And so I knew with attitude and,  
[19] again, rumors and gossip, which were in fact true,  
[20] that I believe, and so I knew I was going out.  
[21] But I still wanted to learn as much as I could  
[22] while I was there and do the best that I could,  
[23] which I believe I did.  
[24] Q: You said that the board attempted to  
[25] terminate you on September 24th?

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[1] A: Yes.  
[2] Q: When did the board try to terminate you  
[3] on September 24th?  
[4] A: They were — from what I understand they  
[5] were going to terminate me after 30 days and that  
[6] was told to me by Flo Gardipee.  
[7] Q: And that's the board of directors  
[8] meetings where you sent a letter saying you want  
[9] to be reinstated in your old position?  
[10] A: Yes, because I knew that it was coming.  
[11] Q: How did you know it was coming?  
[12] A: Rumors and gossip, attitude, the way I  
[13] was treated.  
[14] Q: And when you said you called Ms. White  
[15] Crane on —  
[16] A: November 14th.  
[17] Q: November 14th at about 10:00 in the  
[18] morning, you wanted to know if they were  
[19] terminating you consistent with their original  
[20] plan?  
[21] A: No, I said I got a call from Luanne and  
[22] she asked me to come in for a meeting or wanted to  
[23] meet with me and I said, Is there anything else  
[24] you can tell me that I should know or get prepared  
[25] for or anything, you know, I didn't know. And you

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[1] could take that any way, whether I should prepare  
[2] my stuff to leave, should I get the budgets, and  
[3] she said no, and I said okay. I said, Is there  
[4] anything you can tell me, she says no. I said,  
[5] Are they going ahead with the original plan, she  
[6] said no. Or she said, I can't answer that.  
[7] Q: What do you mean by the original plan?  
[8] A: By the September 24th when they attempted  
[9] to terminate me then.  
[10] Q: So how did Ms. White Crane know what you  
[11] were talking about with this original plan?  
[12] A: Because she was there at the meeting.  
[13] Q: I mean, I don't understand, if you call  
[14] somebody on November 24th and say you're going  
[15] ahead with the original plan, how are they going  
[16] to know you're talking about a September 24th  
[17] meeting?  
[18] A: Because that's when the original plan  
[19] originated.  
[20] Q: But original plan to me is vague. I  
[21] mean, it could mean original plan to get an ASAP  
[22] van.  
[23] A: Let me put this way; I was right on when  
[24] I asked her that. So I don't know if she intended  
[25] for me to figure that out or what, but she

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(1) wouldn't give me any information and I took it  
(2) upon myself to at least assume, which is not good,  
(3) that that's what they were going to do.  
(4) Q: Well, it's also possible —  
(5) A: When in fact I was right.  
(6) Q: It's also possible Ms. White Crane had no  
(7) idea what you were talking about?  
(8) A: Could very well be.  
(9) Q: Okay. So you believe you demonstrated  
(10) growth in the work area such as employee morale,  
(11) conflict resolution and communication?  
(12) A: I believe that I improved in my personal  
(13) approach to work. As far as employee morale,  
(14) that's a question because it would take a lot  
(15) longer than what I had and there was a lot of  
(16) damage done there that I had seen. And as far as  
(17) reliability and dependability, yes, I believe I  
(18) improved on those.  
(19) I mean, I did the grants and I scheduled  
(20) the team building, which again, like I said, I  
(21) could not reschedule because I had already set it  
(22) for the 15th, and sent out fliers that Missoula  
(23) Indian Center would be closed on the 15th and I  
(24) said, well, maybe I can — you know, we'll do it  
(25) anyway. It had to be done so I went with it. And

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(1) as far as human relations, I believe that my  
(2) interpersonal public relations, yes, improved. I  
(3) also believed that management and leadership was a  
(4) challenge, and I can't say if that improved or  
(5) not. Because again, the respect and professional  
(6) relationship with staff members and establish  
(7) mutual respect was — it was going to be a long  
(8) road, a long haul. I just don't believe that it  
(9) could not be done. I believe it could have been  
(10) done. I just didn't have the time.  
(11) Q: We asked you some discovery requests and  
(12) I think you have those in front of you.  
(13) Interrogatory No. 12 asks about refusal to violate  
(14) public policy, it looks like on page 9. What  
(15) public policy did you refuse to violate?  
(16) A: Because I wanted to do urinalysis testing  
(17) for the health department center to see if further  
(18) illegal drug usage, which also, again, included  
(19) alcohol, according to the policies and procedures.  
(20) Q: So what public policy did you refuse to  
(21) violate?  
(22) A: By not addressing that I knew what was  
(23) going on.  
(24) Q: Let me see if I understand you correctly  
(25) then. So the public policy that you refused to

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(1) violate was that you were told that employees were  
(2) using illegal drugs?  
(3) A: Yes. So I had to act on it.  
(4) Q: And you wanted to act on it by doing drug  
(5) testing?  
(6) A: Doing drug testing.  
(7) Q: And so do you believe not doing drug  
(8) testing is a violation?  
(9) A: Yes, I do.  
(10) Q: But you said the board would allow you to  
(11) do drug testing and start the policy to do that?  
(12) A: I did not get the chance to do it. And  
(13) again, Flo Gardipee will come forward and say that  
(14) that was brought up at the meeting, and that was a  
(15) very big discrepancy, or I should say discussion,  
(16) that they did not want me to do this.  
(17) Q: But if I understand, so your violation of  
(18) public policy was that you wanted to do drug  
(19) testing of the employees and the board didn't give  
(20) you enough time to do it?  
(21) A: Yes, partly, that's not —  
(22) Q: What's the rest of it?  
(23) A: The rest of it is that I don't think they  
(24) wanted me to do it at all.  
(25) Q: But they never stopped you from doing it?

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(1) A: I didn't get the time to do it.  
(2) Q: Didn't get the time to do it. So  
(3) that's — I guess that's what I was saying. So  
(4) the violation — or you refused to violate public  
(5) policy by not having enough time to complete drug  
(6) testing of employees?  
(7) A: Yes.  
(8) Q: Okay. And the next interrogatory, No.  
(9) 13, which is at the bottom of page 10 says, Please  
(10) identify each document, fact or other item of  
(11) evidence that indicates or states that the  
(12) identified items are matters of public policy, in  
(13) which you talk about is alcohol and marijuana is  
(14) illegal according to Missoula Indian Center  
(15) policies and procedures handbook and then gives a  
(16) cite. Is there any other policies or  
(17) procedures — sorry, public policies that you  
(18) think were violated?  
(19) A: Yes, I think it's illegal to drive a  
(20) vehicle while under the influence.  
(21) Q: Did anybody ask you to drive a vehicle  
(22) while under the influence?  
(23) A: Did anyone ask me, no.  
(24) Q: Okay. But you're implying that other  
(25) people were doing that?

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[1] A: Exactly.  
[2] Q: But I guess what I'm interested in is did  
[3] anybody ask you to violate a public policy?  
[4] A: I don't understand the question. Am I to  
[5] violate the public policy by how?  
[6] Q: Any way, I mean, did anybody ever say to  
[7] you, Hey, Esther, we want you to violate a public  
[8] policy, whatever public policy?  
[9] A: No.  
[10] Q: Interrogatory No. 14 says let's talk  
[11] about provisions of the written personnel policy  
[12] and procedures you allege has been violated. And  
[13] I assume through today we have talked about  
[14] everything here. Would that be right?  
[15] A: Yes.  
[16] Q: And so some of the public policies — or  
[17] sorry. Some of the personnel policies that you  
[18] think were violated was that board members raised  
[19] their voices and glared at you, right?  
[20] A: Well, we are to follow ethics, and I  
[21] don't believe that was very ethical. So that is a  
[22] violation of policy.  
[23] Q: Okay. And then we talked about whether  
[24] or not you were a new employee, the probationary  
[25] period?

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[1] A: Yes.  
[2] Q: It says I was expected to do both jobs as  
[3] executive director and cultural prevention  
[4] specialist, during the first week of your position  
[5] as executive director. Do you think that violated  
[6] the personnel policies or procedures?  
[7] A: I think it did. They should have paid me  
[8] for both jobs if I was performing both jobs.  
[9] Q: Did you work 80 hours that week?  
[10] A: I worked 80 hours, yes, I did. I  
[11] actually worked 24 hours a day that week.  
[12] Q: You didn't sleep at all that week?  
[13] A: I slept, but I was on security for the  
[14] Pow Wow for the culture camp.  
[15] Q: Where was that Pow Wow at?  
[16] A: Fort Missoula.  
[17] Q: Did you guys ever do Pow Wows at the Daly  
[18] Mansion?  
[19] A: In Hamilton?  
[20] Q: Yeah.  
[21] A: I have attended them but I didn't do  
[22] them.  
[23] Q: Who puts those on, do you know?  
[24] A: You know, I'm not really sure. Because I  
[25] know they didn't have it this year but —

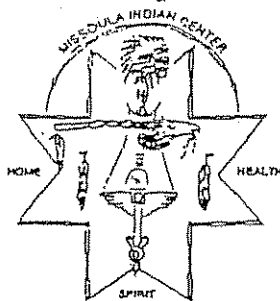
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[1] Q: I don't think they had it last year  
[2] either. But I went a couple years ago, too.  
[3] Anyway, Interrogatory No. 14 says you think it was  
[4] a violation for the board to micromanage you, and  
[5] you think it was a violation of policy, the  
[6] personnel policy for you not to be able to carry  
[7] out the task of testing for illegal drug use. But  
[8] I think we talked earlier that there is no policy  
[9] for drug testing at the Missoula Indian Center?  
[10] A: The policy — I don't recall if there is  
[11] a policy in the manual but I know that — because  
[12] I did it myself. We had to sign a statement  
[13] stating that if there was any allegations or  
[14] suspicions that we were to be tested for illegal  
[15] drug usage, and that's what I was going to do. So  
[16] that paper had to come from somewhere. And again,  
[17] I don't remember reading that. But I would have  
[18] been subject to it as ASAP coordinator. If  
[19] someone had come in and said, well, I saw her  
[20] drinking last night or doing something, I would be  
[21] subject to go to the hospital and get tested, and  
[22] I agreed to that. But the health department also  
[23] agreed to it and they did sign their statements.  
[24] Q: You looked at the statements and saw  
[25] them?

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[1] A: They have been there for a long time. I  
[2] didn't — actually, I didn't see them, no.  
[3] Q: But you assumed that they did?  
[4] A: I was going to look for them.  
[5] Q: And I assume if they hadn't signed them  
[6] you were going to ask them to sign those  
[7] statements?  
[8] A: Yes.  
[9] Q: And so you also made an allegation that  
[10] your discharge was with actual fraud or actual  
[11] malice. And you can look at your answer, it's on  
[12] page 12, it's in response to Interrogatory No. 16.  
[13] Let me know when you're ready.  
[14] A: Okay.  
[15] (Discussion held off the record.)  
[16] Q: (By Mr. Morris) What we're talking about  
[17] is you believe that the Indian Center acted with  
[18] actual fraud or actual malice in terminating you.  
[19] And of course you have an answer here talking  
[20] about why you think that is. And I guess to me,  
[21] tell me why you think there was any fraud in your  
[22] termination.  
[23] A: Okay. The fraud because I believe that I  
[24] was not a new employee and I should not have been  
[25] subjected to a probationary period.





# MISSOULA INDIAN CENTER

P.O. Box 16927 • Missoula, MT 59808

Telephone (406) 829-9515 • Fax (406) 829-9519

August 2, 2002

To: Esther Iron Shell  
1203 1/2 River Rd. #3  
Missoula, MT 59801

Re: Executive Director Position

Dear Esther:

I am writing in regards to your recent application for the Executive Director Position.

We are pleased to inform you that you have been selected for the position as the Executive Director. You will be working with the Interim Director starting August 5, 2002 in a transitional position as you develop your skills to lead this organization. Also you will be expected to complete all past ASAP obligations (youth camp art). You will remain at your current wage during this time. Beginning August 16, 2002 you will begin your 90 day probation period as the Director at the starting wage.

During this probation period you will be expected to fulfill the following criteria:

1. Seek out and submit one major grant proposal.
2. Work on gaining strong supervisory skills.
  - a. Demonstrate growth in the work area, such as employee morale, conflict resolution, and communication
  - b. Find resources to help with supervisory skill building training.

At the end of the 90 days you will be evaluated on your performance as the director. At that time a decision will be made concerning making the Director position permanent.

We look forward to having you in this position and hope that all lines of communication will be open between you and the Board of Directors. If you have any questions or concerns, please don't hesitate to contact the Board.

Sincerely,

*Luanne Kickingwoman*

Board of Directors  
Personnel Chairperson

ER-009

1 W. Carl Mendenhall, Esq.  
2 Sean Morris, Esq.  
3 WORDEN THANE P.C.  
4 Attorneys at Law  
5 P.O. Box 4747  
6 Missoula, Montana 59806  
7 Telephone: (406) 721-3400

FILED NOV 08 2004

SHIRLEY E. FAUST, CLERK  
By \_\_\_\_\_ Deputy

8 Attorneys for Defendant Missoula Indian Center, Inc.

9  
10 MONTANA FOURTH JUDICIAL DISTRICT COURT  
11 MISSOULA COUNTY

12 ESTHER IRONSHELL,

13 Plaintiff,

14 vs.

15 MISSOULA INDIAN CENTER, INC.,

16 Defendant.

Dept. 2

Cause No. DV-03-937

AFFIDAVIT OF LUANNE KICKING  
WOMAN IN SUPPORT OF  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT

17 STATE OF MONTANA )  
18 ) ss  
19 COUNTY OF Missoula )

20 Luanne Kicking Woman, after being first sworn on her oath, testifies  
21 as follows:

22 1. I am over the age of eighteen years and make this affidavit  
23 based on my own information and knowledge.

24 2. At all times relevant to this action I was on the Board of  
25 Directors for the Missoula Indian Center.

26 3. I was part of the panel which interviewed Esther Iron Shell for  
the position of executive director. In the interview, I specifically informed

AFFIDAVIT OF LUANNE KICKING WOMAN IN SUPPORT OF  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

1 Ms. Iron Shell that the executive director position would be probationary for  
2 the first 90 days. In addition, I informed her that we would evaluate her  
3 after thirty and sixty days before determining whether to offer to her the  
4 permanent position. Ms. Iron Shell did not express any concern or  
5 objection to the probationary term.

6 4. Ms. Iron Shell began her full time duties as the executive  
7 director on August 16, 2002. Soon thereafter, I had an orientation meeting  
8 with Ms. Iron Shell. I informed her, again, the position was probationary  
9 and, in addition, outlined the items the Board of Directors wanted her to  
10 work on. At no time did Ms. Iron Shell inform me or the Board of  
11 Directors that she objected to the probationary term.

12 5. As the executive director, Ms. Iron Shell's duties were  
13 significantly expanded from her position as ASAP coordinator. She  
14 supervised, disciplined, hired and fired any and all of the eleven  
15 employees. She was responsible for setting the policy for the Center as  
16 well as applying for grant funding, reporting to the Indian Health Service,  
17 and making presentations to the members and the public as to the purpose  
18 of the Center. In short, she had the most responsibility of anyone at the  
19 center, was the highest paid employee at the Center, and was the public  
20 face for the Center. There was no one at the Center with more  
21 responsibility.

22 6. On November 11, 2002, the Board of Directors met to evaluate  
23 Ms. Iron Shell and determine whether to offer the permanent position to  
24 her. Ultimately, we decided that, among other reasons, her inability to  
25 obtain the respect of the employees and create a positive work  
26 environment as well as her lack of professionalism and failure to report to

1 the Board required us to not offer the permanent position to her.

2 7. The decision to not offer the permanent position to Ms. Iron  
3 Shell had nothing to do with her interest in implementing an employee drug  
4 testing policy. In fact, the Board agreed to allow her to investigate the  
5 legality of such a testing policy.

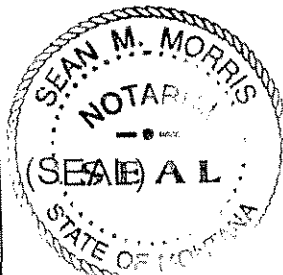
6 8. In the three years preceding Ms. Iron Shell's acceptance of the  
7 executive director position, the Missoula Indian Center had several  
8 problems with the previous executive directors including lack of  
9 professionalism, inability to supervise staff, failure to report to the Board  
10 accurate financial information, poor grant reporting, bad audits, and failure  
11 to respect the Board as the employer.

12 9. Based on the previous problems as well as the significant  
13 increase in job responsibilities, the Missoula Indian Center wanted to  
14 evaluate Ms. Iron Shell as the executive director before determining  
15 whether to offer the permanent position to her. This is a legitimate  
16 business reason for requiring that the employment be probationary.

17 DATED this 8<sup>th</sup> day of November, 2004.

18  
19 Luanne Kicking Woman  
20 Luanne Kicking Woman

21 SUBSCRIBED AND SWORN before me this 8<sup>th</sup> day of  
22 November, 2004.



27  
28  
29  
30

Name: SEAN MORRIS  
Notary Public for the State of MONTANA  
Residing at: MISSOULA, MT  
My commission expires: 5/10/2006

AFFIDAVIT OF LUANNE KICKING WOMAN IN SUPPORT OF  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Page 3

[illegible]

Kevin E. Vainio, Esq.  
27 West Park Street  
Butte, MT 59701

Judy Leek

#04015597.WPD

5

September 25, 2002

Esther Iron Shell  
1203 1/2 River Rd. #3  
Missoula, MT 59801

RE: Thirty (30) day evaluation

Dear Esther,

After extensive review of your evaluation by staff and board members it has been determined that you may continue in your probationary status. During the last thirty days you have displayed a high level of enthusiasm for your job and serving the Native American community of Missoula. However, we would like to bring to your attention and set out an improvement plan for areas identified as weakness' in the evaluations.

We would like to remind you that the hire letter of August 2, 2002 is still in effect, you are still obligated to follow the criteria set out. Currently, we are temporary suspending all travel so that you can have more time to get familiar with your position and to get tasks completed.

Below we are listing areas of weakness identified in the thirty day evaluation and recommendations from the Board of Directors on how to improve these areas.

Areas of weakness':

Personal Approach to Work – become involved in team building and communication activities.

Judgment – use your professional discretion and follow MIC policies.

Reliability and Dependability – follow hire letter criteria #2 (b).

Management and Leadership – develop respectful and professional relationship with staff members and establish mutual respect.

Human Relations – improve interpersonal and public relations.

We would like to express our appreciation to you for your hard work thus far, we encourage you to keep up the good work. If you have any questions please do not hesitate to contact me.

Sincerely,

*Luanne Kicking Woman*

Luanne Kicking Woman  
Chairperson, Board of Directors Personnel Committee

*Esther Iron Shell*

9-25-02

ER-005

6  
October 25, 2002

Esther Iron Shell  
1203 1/2 River Rd. #3  
Missoula, MT 59801

RE: Sixty (60) day evaluation

Dear Esther,

During the past sixty days you have displayed a high level of enthusiasm for your job as Executive Director. The Personnel Committee has reviewed all sixty (60) day evaluations, we are recommending that you still need to address areas identified as weakness' in the thirty day evaluation.

Also, we would like to remind you that the hire letter of August 2, 2002 is still in effect, you are still obligated to follow the criteria set out. Below are listed areas that still need improvement, and recommendations from the Board of Directors of how to improve these areas.

Areas of weakness:

Personal Approach to Work-- more involved in team building and communication activities.

Judgement -- use your professional discretion and follow MIC policies.

Realiability and Dependability---follow hire letter criteria #2(b)

Management and Leadership--develop respectful and professional relationship with staff members and establish mutual respect.

Human Relations--improve interpersonal and public relations

If you have any questions please don't hesitate to contact the Personnel Committee.

Sincerely,

*Luanne Kicking Woman*

Luanne Kicking Woman  
Chairperson, Board of Directors Personnel Committee

*Esther Iron Shell*

11-11-02

ER-038

#### E. PROBATIONARY EVALUATION PERIOD:

A probationary evaluation period is intended as a working test period and shall be regarded as an integral part of the evaluation process. The employee's immediate Supervisor, with concurrence from the Executive Director, may remove an employee at any time during the probationary evaluation period when the immediate Supervisor becomes convinced that the employee is unable or unwilling to perform the stated duties of the position in a satisfactory manner, that his/her habits and dependability do not merit continuance in the service, or where an error or misrepresentation was made in the application. If the employee's immediate Supervisor desires to extend the probationary evaluation period, he/she shall notify the employee of the extension in writing at least fifteen (15) calendar days prior to the expiration of the original probationary evaluation period. The Supervisor, with concurrence of the Executive Director, shall then extend the evaluation period of the employee.

New employees shall be in an probationary evaluation status for 480 hours. After successful completion of the probationary evaluation period, employment shall be contingent upon availability of funds. Interim evaluations may be performed at the end of 30 and 60 calendar days. The Executive Director/Supervisor shall provide written documentation for all evaluation period reviews.

Center employees who leave for reasons other than disciplinary problems or unsatisfactory performance and who were employed by the Center for at least twelve (12) months and who are subsequently re-hired by the Center shall not be required to serve a probationary evaluation period.

The Executive Director shall have the authority to initiate a probationary evaluation procedure in cases of staff promotion or re-assignment in order to evaluate the performance of the employee in their new position.

#### F. EMPLOYEE PERFORMANCE EVALUATION:

##### 1. Evaluation Periods and Dates

NOTE: All new employees shall be evaluated at the end of ninety (90) days and may be evaluated at 30 to 60 days within this 480 hours as noted in above section. ALL employees shall be evaluated annually on their anniversary date of employment.

- a. For new employees, evaluation report periods shall be due no later than ten (10) calendar days following the evaluation period end date.
- b. Evaluation reports for annual and promotion salary increases shall be due no later than thirty (30) calendar days prior to the effective date of the salary increase.